STATE OF CALIFORNIA

DEPARTMENT OF FINANCIAL INSTITUTIONS

FINAL STATEMENT OF REASONS

On April 26, 2002, the Department of Financial Institutions ("Department") published its Notice of Proposed Rulemaking (OAL Notice Register 2002 No. 17-Z). In addition, the Department posted the notice, the initial statement of reasons, and the text of proposed changes on its internet web site. The public comment period ended June 19, 2002. No public hearing was requested. Twelve comment letters were received.[1]

On October 8, 2002, the Department mailed for public comment a Notice of 15-Day Changes, together with the text of proposed changes, to all persons required to receive notice of such changes under 1 C.C.R. §44. In addition, the Department posted the notice and the text of the proposed changes on its internet web site. The Department received four comment letters with respect to the proposed 15-day changes.[2]

Part 1 of this Final Statement of Reasons is an update of the information contained in the initial statement of reasons. Part 2 contains a determination as to whether this rulemaking imposes a mandate on local agencies or school districts. Part 3 contains a summary of each objection or recommendation made during the 45-day public comment period regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposed action has been changed to accommodate each objection or recommendation, or other reasons for making no change. Part 4 contains a summary of each objection or recommendation made during the 15-day public comment period regarding the specific adoption, amendment, or repeal proposed, together with an explanation of how the proposal has been changed to accommodate each objection or recommendation, or other reasons for making no change. Part 5 of this Statement contains a determination with supporting information that no alternative considered by the Department would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation. Part 6 discusses the facts, evidence, documents, testimony, or other evidence on which the agency relies to support an initial determination that the action will not have a significant adverse economic impact on business.

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[1]The comment letter from Western Federal Corporate Credit Union ("Wescorp") was received on July 2, 2002, after the close of the 45-day public comment period. Nonetheless, the Department is including the comments received from Wescorp in this Final Statement of Reasons.

[2]The comment letter received from the law firm of Moore, Brewer, Jones, Tyler & Wolfe on behalf of Arrowhead Credit Union requested a public hearing. It is the Department's position that the California Administrative Procedures Act does not require the Department to have scheduled a public hearing in response to this request.

PART 1
UPDATED INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons, included in the Final Rulemaking File as Exhibit 3, is incorporated herein by reference, except as otherwise modified by the following:

Section 30.30. Economic Feasibility - Existing Credit Union.

As stated in the Initial Statement of Reasons, proposed regulation Section 30.30 would define the term "economic feasibility" as used in Financial Code Section 14155(f). As initially proposed, the factors which the Department will consider in determining whether economic feasibility exists included (a) whether the equity capital of the credit union is adequate; (b) what are the quality of assets of the credit union; (c) what is the level of earnings of the credit union; (d) what is the current liquidity position of the credit union; (e) what is the quality of management of the credit union; (f) whether the business plan of the credit union is adequate; (g) whether the marketing plan of the credit union is adequate; (h) whether the business practices of the credit union are adequate; and (i) such other factors as are in the opinion of the Commissioner relevant.

A party that submitted comments to this rulemaking during the public comment period (generally referred herein to a "Commenting Party") criticized the wording of Subdivision (i) as overly broad and believed that the Subdivision should be deleted. After further consideration, the Commissioner agrees that the Subdivision (i) is worded too broadly. However, the Commissioner believes that some flexibility is need so that he may consider factors that may impact on the necessary findings but are not specifically provided for in the regulation. Accordingly, the Commissioner amended Subdivision (i) to provide that in making a determination of economic feasibility, the Commissioner could consider "such other factors that bear upon a determination of the economic feasibility of the proposal."

Section 30.31. Equity Capital Adequacy.

As stated in the Initial Statement of Reasons, proposed regulation Section 30.31 would define the term "adequate equity capital" as used in proposed regulation Section 30.30(a). The proposed regulation provides a list of what the Department may consider when reviewing "adequacy of equity capital." The listed factors include: (a) the nature and volume of the business of the credit union; (b) the amount, nature, quality, and liquidity of the assets of the credit union; (c) the amount and nature of the liabilities of the credit union; (d) the history of, and prospects for, the credit union to earn and retain income; (e) the quality of operations of the credit union; (f) the quality of management of the credit union; and such other factors as are in the onion of the Commissioner relevant.

A Commenting Party criticized the wording of Subdivision (g) as overly broad and believed that the Subdivision should be deleted. After further consideration, the Commissioner agrees that the Subdivision (g) is worded too broadly. However, the Commissioner believes that some flexibility is need so that he may consider factors that may impact on the necessary findings but are not specifically provided for in the regulation. Accordingly, the Commissioner amended Subdivision (g) to provide that

in making a determination of the adequacy of equity capital, the Commissioner could consider "such other factors that bear upon a determination that the equity capital of a credit union is adequate."

Section 30.60. Existing Credit Union: Application for Expansion of Field of Membership.

Proposed Section 30.60 addresses the statutory deficiencies of Financial Code Sections 14155 and 15451 by providing guidelines of what is required in an application to expand an existing credit union's field of membership.

Subdivision (d)(1).

As initially proposed, Subdivision (d) states that the information and exhibits that must be submitted as part of an application for an existing credit union to expand its field of membership. Subdivision (d)(1) provides that if the applicant proposes to serve an occupational group or association, the application must include the name and description of the proposed group or association. If the proposed field of membership includes more than one group or association, the application must contain the name and description of each group or association. Further the proposed regulation provided that the application must include the bylaws of each group or association, if the group or association has adopted bylaws.

A Commenting Party stated that this requirement was overly burdensome, particularly with respect to occupational groups, and suggested that the requirement be deleted. After further consideration, the Commissioner has determined to accept this comment only as it applies to groups of employees of a common employer. One of the key tenets in adding additional groups to the field of membership of a credit union is that there is a common bond within the group to be added. The Commissioner believes that one of the objective criteria of such a common bond is the existence of an internal organization for the group. That organization is best demonstrated by the adoption of bylaws. It should be noted that the existence of bylaws is not dispositive. It is one indicia of organization. Thus, the submission of bylaws is only required if the group has adopted bylaws. The Commissioner does agree that a group made up of employees of a common employer will most likely not have adopted bylaws since their common bond is employment. Accordingly, the Commissioner amended the regulation in question to clearly state that no bylaw submission will be required if the proposed group to be added consists of employees of a common employer.

Subdivision (d)(7).

As initially proposed Subdivision (d)(7) required a copy of the business plan and of a marketing plan if the proposed field of membership is a group or community with a potential membership of greater than 5,000 persons.

A Commenting Party stated that the 5,000-person threshold is too low, would add an additional burden on the credit union, and would increase paperwork for the credit union and the Department. Further, Further, the Commenting Party felt that a group of 5,000 persons seems low for a community. The Commenting Party suggested that a higher number be used, such as 300,000. After further

consideration, the Commissioner accepted this comment. The proposed regulation has been amended to provide that if the number of persons in the group that is proposed to be added to a credit union's field of membership is equal to or greater than 20 percent of the current membership of the credit union, or the proposed addition is a community, a copy of a business plan and a copy of a marketing plan shall be included as part of the application.

Subdivision (d)(8).

As initially proposed Subdivision (d)(8) required an application for approval to expand an existing credit union's field of membership to include any other information that the Commissioner decides is necessary to process the application.

A Commenting Party stated that Section 30.60(d)(8) which allows the Commissioner to obtain "any other information" he/she decides is necessary is arbitrary, overly broad, and unnecessary. The Commenting Party recommended that this provision be deleted. After further consideration, the Commissioner agrees that the Subdivision (d)(8) is worded too broadly. However, the Commissioner believes that some flexibility is needed so that he may consider factors that may impact on the necessary findings but are not specifically provided for in the regulation. Accordingly, the Commissioner amended Subdivision (d)(8) to provide that in processing an application to expand a credit union's field of membership, the Commissioner ask for and consider "such other information that bears upon a finding that the proposed field of membership is not contrary to the principles of organizing credit unions, including principles of organizing credit unions based upon common bond of occupation, association, or groups within a well-defined neighborhood, community or rural district."

Section 30.71. Field of Membership: Definitions.

Subdivision (c) of proposed section 30.71 defines "select group" as used in proposed regulation sections 30.72 and 30.73 as meaning either: (1) an association formed by a group of individuals based upon a common bond of occupation, in which case the total number of members of that association may not exceed 1,000; or (2) employees of a common employer, in which case the total number of employees of the common employer may not exceed 1,000.

A Commenting Party requested that the proposed regulation in Subdivisions (c)(1) and (c)(2) be clarified to state at what point in time the group's number is to be "measured." The Commissioner agreed that the proposed regulation should be clarified as suggested and has amended the regulation in Subdivisions (c)(1) and (c)(2) to include the phrase "At the time the application is made."

Section 30.73. Field of Membership: Procedure for Eligible Credit Unions to Add Select Groups.

As initially proposed Section 30.73(a) establishes requirements relating to an application by an eligible California credit union to add a select group to its field of membership. Under Paragraph (1), the first requirement is that a credit union file with the Commissioner not less than 10 business days before adding the proposed select group, specified documents including a document signed by an authorized

representative of the proposed select group or a letter signed by the common employer requesting the addition of the select group to the credit union's field of membership; a statement explaining how the select group shares a common bond of occupation or a common employer; a statement that the number of persons currently within the select group is 1,000 or less; and a statement as to the general locations of the select group to be added.

Because a change in the field of membership of a credit union to add a select group can only be effected by way of a bylaw amendment, it is necessary to include as part of the report requirements a copy of the proposed bylaw amendment. The certification requirement is necessary to ensure that the bylaw amendment reflects the resolution of the board of directors adopting the amendment to add the select group. Subdivision (a)(1) has been amended to add the requirement that an eligible credit union submit together with the other specified documents, two copies of the bylaw amendment adding the select group, in the form of a certificate of secretary or assistant secretary.

Subdivision (a)(2) provides as a second requirement to the streamlined approval process to add select groups, that the Commissioner not reject the report filed by the eligible California credit union within 10 days after it is filed. Because a bylaw amendment is needed to effect a change in the field of membership of a credit union and because a bylaw amendment requires the written approval of the Commissioner (10 C.C.R. §30.103), a second sentence has been added to Subdivision (a)(2) to clarify that if the Commissioner does not reject the report, the bylaw amendment submitted with the report will be deemed approved. Further, Subdivision (b) has been added to require the Commissioner to notify the credit union within 30 days after the application is approved or deemed approved that the application has been approved and to provide the credit union with a copy of the bylaw amendment submitted with the report with the approval of the Commissioner endorsed thereon.

Section 30.105. Bylaws: Submission to Commissioner.

As initially proposed, Subdivision (b) of this Section required an application for approval of an amendment to the bylaws of a credit union to include a complete copy of the bylaws in effect prior to the amendment, and such other information that the Commissioner may require.

Upon further consideration, the Commissioner believes that it is not necessary that a complete copy of a credit union's existing bylaws be provided each time a credit union applies for approval to amend its bylaws. However, the Commissioner nonetheless believes it is necessary to reserve the right to require a credit union to submit to copies of its restated bylaws which incorporate previously approved amendments. This is necessary since a credit union may effect a number of amendments to its bylaws, and over time such amendments will make the bylaws unwieldy and difficult to work with. Credit unions should have the capability to reproduce a complete, restated bylaws without difficulty. The proposed regulation also would require the Commissioner to return one copy of the restated bylaws to the credit union with his approval endorsed thereon.

Section 30.401. Extensions, Refinances, or Revisions.

As initially proposed, Subdivision (a) of this section prohibited the extension, refinancing, or revision of an obligation by a credit union without evidence that the borrower will be able to adhere to the terms of the extended, refinanced, or revised obligation. The existing regulation similarly applies in cases where an obligation is extended, refinanced, or revised. On further consideration, the Commissioner has determined to amend this Subdivision to include reference to obligations in case they are renegotiated, for the sake of clarity. Renegotiated loans would entail revisions to the underlying obligation, so this change is not substantive. A conforming change is also made in the title of the regulation section.

A Commenting Party objected to the proposed changes to this section, in part because they would interfere with a credit union's ability to offer holiday or summer skip-a-pay programs. On further consideration, the Commissioner has determined to create an exception that an obligation will not be deemed to be "extended" if the term of the obligation is lengthened because: (1) the terms and conditions of the obligation provide for a "skip payment" option; and (2) a general offer is made by a credit union to all its members in good standing to skip a payment, provided no more than two payments per calendar year are skipped in reliance on this provision. This change is necessary to allow credit union to continue to offer skip payment programs, consistent with safe and sound practices.

Section 30.501. Vendor's Single Interest (V.S.I.) Insurance.

Although an amendment to Section 30.500 was not included in the Commissioner's initial proposal, an amendment to this Section is required as a result of the repeal of existing Section 30.500 and the adoption of new Section 30.500. New section 30.500 replaces specific requirements with a more generalized requirement which is intended to give credit unions greater flexibility and control with respect to insurance on personal property security, while establishing minimum requirements to promote safety and soundness.

This change was not intended to change the authorization contained in Section 30.501 for a credit union to obtain a Vendor's Single Interest (V.S.I.) insurance if the credit union ascertains that motor vehicle insurance is not obtainable for a borrower. Accordingly, the cross reference to "Subdivision (a) of Section 30.500" should be replaced with a conforming reference to "Section 30.500 with respect to motor vehicles." The Commissioner views this change as a only technical in nature and not a substantive change in the regulation.

Section 30.602. Retention of Books and Records.

As initially proposed, Subdivision (d) of Section 30.602 would have permitted a credit union to maintain and store records using optical image storage media, provided that the optical image storage media meet certain requirements, including that the media be consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management. Because the referenced standards were not incorporated by reference in accordance with Section 20 of the California Code of Regulations, the Commissioner has determined to delete the proposal to add the new language to Subdivision (d), pending additional study into how best to define the minimum standards to be required in using optical image storage media. The

Commissioner believes that this provision is severable from the remainder of the rulemaking since there is no other provision which is affected by its deletion.

Section 30.701. Financial Statement and Report of Obligations.

Subdivision (b) of this Section, as originally proposed, required a credit union to post copies of its statement of financial condition and statement of income in a conspicuous place in the office of the credit union or at a place convenient to the members as designated by the board of directors. This Subdivision also provided that in lieu of posting copies of such financial statements, the credit union may make copies of such financial statements available to members upon request.

A Commenting Party suggested that the proposed regulation be amended to require that the notice of the availability of financial statements be posted in a conspicuous. On further consideration, the Commissioner determined to amend his proposal to include such a requirement since credit union members may not know that they have right to request copies of such financial statements. Also, for clarity, the proposed regulation has been amended to specify that the credit union has an obligation to make copies of the financial statements available to members upon request.

Section 30.802. Obligations Secured by Real Property.

This section establishes requirements relating to obligations secured by real property. As initially proposed, Subdivision (a) contained references to a "lien on unimproved real property," and a "lien on improved real property."

Upon further consideration, the Commissioner made technical changes have been made to these references in Subdivision (a)(1)(A) and (B) which now refer to a "lien on a parcel of unimproved real property," and a "lien on a piece of improved real property" to clarify that the requirements apply with respect to obligations secured by specific real property. For example, the aggregate limits of $100,000 described in Subdivisions (a)(1)(B)(3) and (a)(1)(B)(4) apply to liens held by a credit union on specific piece of real property security, and do not apply to aggregate liens held by a credit union on differing pieces of real property. Also, technical, nonsubstantive amendments have been made to clarify that liens on improved real property include the land and any improvements thereon.

Subdivision (c) has been added to the proposed regulation, which incorporates the provisions of existing regulation section 30.802(c). This Subdivision limits the total loans and line of credit advances outstanding which are secured by real property to 40 percent of total loans, except that if a credit union has gross assets of $20,000,000 or more, a written asset liability plan or policy in effect, and has made real property loans for more than four years, may exclude from the 40 percent limit certain loans. These loans include: (1) any loans meeting the standards of the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (2) any loans saleable in the secondary market as evidenced by commitments to buy by a buyer in the secondary market; (3) any line of credit loans; (4) certain adjustable loans which are secured by real property which has or will have not more than four residential units; and (5) any loans for which the promissory note contains an option or series of options

by the credit union to call the loan during a sixty day period commencing not sooner than two years, nor later than seven years, from the date of each option period, there are no penalties for prepayment by the borrower, and a specified written disclosure, or its substantial equivalent, is given to the borrower. The notice will advise the borrower that the credit union has the right to call the loan on a specified date; that the credit union may exercise this right any time during the thirty-day period immediately following the specified date; if the credit union exercises its right to call the loan, the borrower will be required to pay the loan in full or arrange new financing; and that it cannot be predicted whether the credit union will exercise the option, but that it will generally be to the lender's advantage to exercise the option if an increase in interest rates has occurred or is anticipated, if the term of the loan extends significantly beyond the option date, or if other reasons exist making the call of the loan advantageous to the credit union. As initially proposed, the Commissioner had proposed to delete this requirement. However, upon further consideration, the Commissioner has decided that further study is necessary to determine whether elimination of the 40 percent concentration limit is appropriate and consistent with safety and soundness, or whether utilizing a different measure of concentration, as suggested by a Commenting Party, may be more appropriate.

As initially proposed, Subdivision (c) (now (d)) of this Section excepted certain obligations from the requirements of Subdivision (a) of this Section. Paragraph (1) of Subdivision (c) (now (d)) contained an exception for an obligation with a principal balance of $50,000 or less, provided, however that "Paragraph (3) of Subdivision (a) shall apply to a junior lien of $50,000 or less."
This quoted language has been changed. Paragraph (1) continues to exempt obligations with a principal balance of $50,000 or less, but it has been clarified to state that all junior liens on a piece of real property will be counted for the purpose of applying the $100,000 threshold in both Paragraphs (3) and (4) of Subdivision (a). Paragraph (4) also contains an aggregate threshold above which full title insurance policy is required, and obligations with a principal balance of $50,000 or less, which alone would not trigger the requirement, should be included in determining whether the $100,000 threshold has been exceeded.

As initially proposed, Subdivision (e) (now (f)) of this Section provided that the proposed regulation applied to any obligation secured by real property which is created, renewed, extended, renegotiated, or otherwise modified, on or after the effective date of the regulation. Upon further consideration, the Commissioner has determined to clarify Subdivision (e) (now (f)) to state that the regulation does not affect any authorization contained in a written variance or waiver of this Section which was issued by the Commissioner prior to the effective date of this Section and which is still in effect. Under existing 30.802, the Commissioner over the years has issued exemptions to allow a credit union, upon application and on a case-by-case basis, to make real estate loans which varied from or were not in strict compliance with the requirements of this section. A number of these exemptions are still effective, and the Commissioner does not deem it necessary or appropriate to abrogate individual exemptions.

Section 30.1001. Independent Accountant.

Technical amendments are made to this Section with respect to the incorporation by reference of Rule 101 of the Rules of Professional Conduct of the American Institute of Certified Public Accountants, including the interpretations issued thereunder, in effect as of November 30, 2002.

As noted in the Initial Statement of Reasons, the proposed changes to this Section were based on the Commissioner's determination that replacing the existing regulation which attempts to describe the situations in which an accountant will not be considered to be independent, with a regulation which incorporates the independence standards of the AICPA, is more appropriate and would alleviate dual regulation in this area.

The incorporation by reference of Rule 101 and the interpretations issued thereunder is appropriate, since reproducing the Rule and its interpretations *in toto* would have been unduly cumbersome and impractical. Further, the Rule and its interpretations are readily available from the AICPA on its web site, and would have been made available by the Commissioner to any interested person who requested a copy.

PART 2
MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Commissioner has determined that the adoption, amendment, and repeal of regulations as proposed in this rulemaking does not impose a mandate on local agencies or school districts.

PART 3
RESPONSE TO COMMENTS RECEIVED DURING 45-DAY COMMENT PERIOD

Section 5.6181.[3]

Commenting Party: California Credit Union League

Comment: With the proposal to add new regulations establishing Permit Reform Act time limits for field of membership expansions, we question why the Department did not review and modify Section 5.6181 which contains Permit Reform Act time limits for applications for a license to operate as a state-licensed credit union. Section 5.6181 states that the initial review period and the decision period are two weeks, with the maximum time period for deciding upon a license request being 57 days. Over the past three years, credit unions seeking to convert to a state-licensed credit union have waited over 13 months for an approval/denial decision. Also, a request to establish a new state-licensed credit union was filed in late 2001 and a decision to approve or deny has not been made.

Response: The Commissioner rejects this comment. The Commissioner's proposal does not include changes to existing regulation section 5.6181. As such, the comment suggests changes to the Credit

[3]All section numbers referred to herein are to sections contained in Chapter 1 (commencing with Section 1.1) of Title 10 of the California Code of Regulations.

Union Regulations which are beyond the scope of the Department's proposal. However, it may be instructive to the Commenting Party to clarify that the time limits set forth in Section 5.6181 do not apply to an application for approval to convert to a federally chartered credit union to a state chartered credit union, as suggested by the Commenting Party. While Financial Code Section 15350 requires a federal credit union converting to a state credit union to obtain a certificate pursuant to the provisions of the Credit Union Law governing the formation of a new state chartered credit union, this does not mean that such applications are treated the same. In the case of a conversion application under Financial Code section 15350, the Commissioner is authorized to conduct an audit of the federal credit union. Such an audit does not occur in the case of an application for a new license, and would require a considerably greater allotment of time.

Section 5.6182:

Commenting Party: Styskal, Wiese & Melchione

Comment 1: We recommend that the time periods be reduced to thirty (30) days for the initial review period and thirty (30) days for the decision period. This seems very reasonable given the fact that regulation section 5.6181 currently states an application for a certificate to engage in the business of a state credit union requires only a two (2) week initial period and a two (2) week decision period. Surely an application to engage in the practice of a state credit union is more complex than a field of membership addition. Therefore, the specified time frames in this section should be further reduced.

Response: The Commissioner rejects the comment. The Permit Reform Act time limits in the proposed regulation are based on the Department's actual, historical processing times. There are reasons why a comparison to the time limits specified in Section 5.6181 is not appropriate. First, the time limits specified in Section 5.6181 were made a part of the Credit Union Regulations many years ago, and are not even fair estimates of the actual processing times in the current environment. Second, the number of applications for approval of field of membership expansions are many, many times the number of applications for a new license to engage in the credit union business. In addition, by this rulemaking the Department is establishing expedited procedures for certain field of membership expansions. It is hoped that these new procedures will positively impact the Department's processing time with respect to other applications.

Comment 2: DFI should establish minimum time frames for reviewing and approving bylaw amendments and variance requests, as well as make clear that the two week time frames for a certificate to engage as a state credit union also applies to reviewing and approving a credit union's field of membership when it is converting from a federal to a state charter.

Response: The Commissioner rejects the comment. The Permit Reform Act requires state agencies which issue permits to adopt regulations setting forth specified time period with respect to applications for permits. A permit, under the Permit Reform Act, is any license, certificate, registration, permit, or any other form of authorization required by a state agency to engage in a particular activity or act. It is the Commissioner's view that an application for approval of a bylaw amendment and a request for a

waiver of a regulation are not applications for "permits" within the meaning of the Permit Reform Act. As such, the Department is not required to establish Permit Reform Act time limits with respect to such applications. In addition, as noted with respect to Comment 1 above, the time limits covered by this regulation do not apply to charter conversions.

Section 30.30.

Commenting Party: California Credit Union League

Comment 1: While the California Credit Union League does not object to the concept of the proposed regulations dealing with economic feasibility, we question why the Department is proposing them only for credit unions and not for the other institutions they supervise. There are no similar standards for banks at this time. In fact, the word feasibility does not appear anywhere within the regulations applicable to California state-chartered banks.

Response: The Commissioner rejects this comment. Financial Code Section 14155(f) provides, in pertinent part, that the Commissioner may deny an application for a certificate to act as a credit union or an expansion of the field of membership of an existing credit union if the applicant's showing as to the economic feasibility of the proposed credit union is inadequate. The California Credit Union Law (Division 5 (commencing at Section 14000) of the Financial Code) (the "Credit Union Law") does not describe what factors the Department must consider when making a determination of "economic feasibility." Section 30.30 lists the factors the Department believes are relevant and useful in the making of such a determination. The Department is confused by the argument that in defining in a regulation a term that is not defined in statute the Department is mistreating credit unions. There are two purposes to define the term "economic feasibility." First, the definition provides the licensee with knowledge of what the Department considers when making a determination of "economic feasibility." Second, the definition requires the Department to consider all of the factors set forth in the regulation, thereby holding the Department to a set standard when making that determination.

The argument that credit unions should not be subject to the proposed regulation because banks are not subject to a similar definition is irrelevant. However, even if we accept the argument that all licensees of the Department must be regulated in exactly the same manner, it must be noted that there is no commonality in the definitions governing the various licensees. No statute governing banks, or any other licensees of the Department, contains the term "economic feasibility." Consequently, the proposed definitional section would have no substantive meaning in those other statutory schemes.

Comment 2: We also have concerns that there are no established standards for determining any of the five areas contained within this regulation. If provides wide latitude to the Commissioner but does not provide credit unions with any input into any standards used.

Response: The Commissioner rejects this comment. The term "economic feasibility" is not defined in the law and, thus, is open to various interpretations. The proposed regulation sets forth factors the

Commissioner should consider when making a determination as to the "economic feasibility" of an application. The Commissioner believes the concepts that are in the regulation are well recognized in the financial institutions community. The Commissioner also believes that the factors are not susceptible to precise, scientific formula. Rather, the consideration of each factor is directly related to the proposal by the credit union. For example, whether there is adequate capital to serve a proposed expansion of the field of membership depends on the size of the expansion. Less capital is needed to serve three additional members of a credit union than is needed to serve 3,000 new members. The importance of the regulation is that the factors listed in the regulation are ones that the Commissioner considers relevant to make a decision regarding an application's "economic feasibility," thereby limiting the chances that a decision on an application will be based upon arbitrary reasoning.

Comment 3: The California Credit Union League questions why, in its Initial Statement of Reasons, the Department is directly criticizing the Legislature for its choice of language within Section 14155. The California Credit Union League believes that it is not appropriate for a regulatory agency to refer to any statute as "poorly organized and poorly worded. If the Department has problems with the law, it should use phrases like "it is unclear what the Legislature intended" to convey uncertainty with a statute.

Response: The Commissioner accepts the comment. The Initial Statement of Reasons should be read to incorporate the comment. The organization and wording of Section 14155 is unclear.

Commenting Parties: Styskal, Weise & Melchione; Meriwest Credit Union

Comment: The parties state that while it may be useful to qualify the factors the Commissioner is entitled to review in connection with economic feasibility, they believe that the overly broad "catch all" provision found in Subdivision (i) of Section 30.30 should be deleted. The parties argue that the proposed provision provides the Commissioner unfettered discretion and may violate Government Code Section 11340, et seq.

Response: The comment is accepted in part. The Commissioner agrees that the Subdivision (i) is worded too broadly. However, the Commissioner believes that some flexibility is need so that he may consider factors that may impact on the necessary findings but are not specifically provided for in the regulation. Accordingly, the Commissioner amended Subdivision (i) to provide that in making a determination of economic feasibility, the Commissioner could consider "such other factors that bear upon a determination of the economic feasibility of the proposal."

Section 30.31.

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Comment: The parties state that while it may be useful to qualify the factors the Commissioner is entitled to review in connection with determining the adequacy of equity capital they believe that the overly broad "catch all" provision found in Subdivision (g) of Section 30.31 should be deleted. The

parties argue that the proposed provision provides the Commissioner unfettered discretion and may violate Government Code Section 11340, et seq.

Response: The comment is accepted in part. The Commissioner agrees that the Subdivision (g) is worded too broadly. However, the Commissioner believes that some flexibility is need so that he may consider factors that may impact on the necessary findings but are not specifically provided for in the regulation. Accordingly, the Commissioner amended Subdivision (g) to provide that in making a determination of the adequacy of equity capital, the Commissioner could consider "such other factors that bear upon a determination of that the equity capital of a credit union is adequate."

Section 30.40.

Commenting Party: Styskal, Weise & Melchione

Comment: Section 30.40(d) states that the resolution form must indicate that the certification "has not been modified or rescinded and is in full force and effect." This language has never previously been required and will likely carry an additional, unnecessary administrative burden for the credit union to notify the Department every time such a resolution is revoked, rescinded or otherwise modified. To this end, Subdivision (c) of Section 30.40 already requires the resolution to specify that the adoption occurred as well as the adoption date. Therefore, Subdivision (d) of Section 30.40 should be deleted.

Response: The Commissioner rejects this comment. The law requires credit unions to submit to the Department certain applications, such as applications for approval of bylaw amendments. Those submissions come in various forms, some of which are unacceptable to the Department. The Department and the credit unions waste time trying to correct those unacceptable filings. This regulation will reduce such unacceptable filings by dictating the content of certificates reporting on actions taken by the boards of credit unions. The comment fails to understand the purpose of the various requirements of such certificates. Often, a board of a credit union may pass the resolution long before a certificate of resolution is drafted, signed, and submitted to the Department. The Commissioner believes that it is necessary to receive assurances that nothing has changed between the date of the passage of the resolution and the date the certificate of resolution is executed. Thus, Subdivisions (c) and (d) are asking for two different items, and both items are believed by the Commissioner to be necessary. The Commissioner rejects the argument that this section creates an administrative burden on the credit unions. A certificate only attests to the accuracy of the statement at the time it is executed. There is no requirement that the certificate be updated in the future. If a board takes future action that requires another certificate to be filed with the Department, such a certificate attesting to that action will have to be submitted. That subsequent submission represents a new filing that is required as a matter of law. The new certificate is not an amendment to a previous submission.

Section 30.50.

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Comment: The parties argue that the term "household members" should be included in the definition of "immediate family members." Generally, the definition of "household members" has included such persons as significant others and domestic partners. The term "household members" broadens the definition of "immediate family members."

Response: The Commissioner rejects this comment. The comment is beyond the purpose of the proposed rulemaking. The proposed regulation is a only intended as restatement of the definition of "immediate family members" currently found in Section 30.105 and to recognize the current Department practice of allowing the individual boards of credit unions to define "immediate family members" in a manner that is suitable to the needs of the credit union members. The term "household member" does not appear in the current regulation defining "immediate family members."

Section 30.51.

Commenting Party: Meriwest Credit Union

Comment: We believe "trade clauses" (i.e., employees and members of an industry, such as the "information and technology" industry) should be included in this section. We believe trade clauses further the common bond principles.

Response: The Commissioner rejects this comment. The comment is beyond the purpose of the proposed rulemaking. The regulation is derived directly from the language found in Financial Code Section 14155. Section 14155 does not include the term "trade clauses." Further, even if the comment were not rejected for that reason, it would be rejected for vagueness. It is unclear what the term means. The commentator provides no workable definition of the term "trade clauses."

Commenting Party: California Credit Union League

Comment: The Leagues does not have any concerns about the language of the proposed regulation. However, we do disagree with a statement contained within the Initial Statement of Reasons describing differences between credit unions and for-profit financial institutions. The Initial Statement (page 7 states: "Without a common bond existing outside of obtaining services from a credit union, the membership of a credit union would be no different from that of any other financial institution." Customers using credit unions are different than consumers using banks in that all members of the credit union are owners of the credit union are owners of the institution with a democratic voting right to elect the board of directors of the organization. We hope that this statement will be removed from the Final Statement of Reasons when published with the final regulations.

Response: The comment is accepted in part. The Commissioner agrees that the statement is worded too broadly. Accordingly, the Commissioner amends the statement to read: "Without a common bond existing outside of obtaining services from a credit union, the composition of the membership of a credit union would be little different from the customer base of any other financial institution."

Section 30.60.

Commenting Party: Styskal, Weise & Melchinone

Comment: There are no specific provisions relating to credit unions converting to state charters and corresponding provisions regarding "new" credit unions expanding their fields of membership. Due to the widespread delays experienced by converting federal credit unions in receiving approval to convert, it appears appropriate that the Department should promulgate reasonable regulations designed to improve the conversion to state charter process and thereby be better able to serve its constituents.

Response: The Commissioner rejects this comment. The comment calls for regulations that exceed the scope of this rulemaking.

Section 30.60(a).

Commenting Party: Styskal, Weise & Melchinone

Comment: Section 30.60(a) states that "community" means a "well-defined neighborhood, community or rural district" and is based on the language of Financial Code Section 14155. We understand that the definition is therefore declaratory in nature and, based on the Initial Statement of Reasons, is not intended to change the Department's policy of allowing credit unions to add a "well-defined community (i.e., cities, counties, etc.) to its field of membership. We believe the regulation should unequivocally state this fact.

Response: The Commissioner rejects this comment. The comment is beyond the purpose of Section 30.60(a) of the proposed rulemaking. The regulation is derived directly from the language found in Financial Code Section 14155 and is intended as a definition. It is not the purpose of Section 30.60(a) to state policy.

Commenting Party: Meriwest Credit Union

Comment: We encourage the Department to retain its longstanding policy of allowing credit unions to add a "well-defined community (i.e., cities, counties, etc.) to its field of membership. We want to be sure this Financial Code definition does not change the Department's policy.

Response: The Commissioner rejects this comment. The comment is beyond the purpose of Section 30.60(a) of the proposed rulemaking. The regulation is derived directly from the language found in Financial Code Section 14155 and is intended as a definition. It is not the purpose of Section 30.60(a) to state policy.

Section 30.60(b).

Commenting Party: Styskal, Weise & Melchinone

Comment: Section 30.60(b) correctly exempts the "streamlined" select group expansion from the Commissioner's approval (which is generally required when a credit union expands its field of membership). However, a Subdivision (c) state that a credit union may not expand its field of membership except through a bylaw amendment (which according to proposed Section 30.105 also requires approval of the Commissioner). Therefore, this appears to conflict with the immediately preceding Subdivision and should specifically exempt the "streamlined" expansion process under Sections 30.70 through 30.73.

Response: The Commissioner accepts this comment in so far as it points out a flaw in the "streamlined" expansion process. Financial Code Section 14103 provided, in relevant part, that the bylaws of a credit union shall prescribe the qualifications for membership in the credit union. The Commissioner believes that the clear language of Section 14103 requires the bylaws to include the field of membership of the credit union since the field of membership is a basic component of the qualifications of membership in a credit union. Proposed Section 30.105 requires that the Commissioner must first approve amendments to the bylaws, including changes to the field of membership of a credit union, before the amendments can become effective. Thus, even under the "streamlined" field of membership expansion process, the Commissioner must approve all bylaw amendments that change/expand a credit union's field of membership. The Commissioner has changed the regulations regarding the "streamlined" field of membership process to include the need for the Commissioner to approve related bylaws amendments.

Commenting Party: Meriwest Credit Union

Comment: Subdivision (b) and Subdivision (c) appear in conflict. Subdivision (b) exempts "streamlined" select group expansion from the Commissioner's approval. Subdivision (c) state that a credit union may not expand its field of membership except through a bylaw amendment (which according to Section 30.105 also requires the approval of the Commissioner).

Response: The comment appears to reflect the last commentator's point. As noted in last response, the regulations were changed to incorporate the need for the Commissioner to approve related bylaws amendments in the "streamlined" field of membership expansion process.

Section 30.60(d)(1).

Commenting Party: Styskal, Weise & Melchinone

Comment: Section 30.60(d)(1) requires a credit union to provide to the Department as part of the application process the bylaws of any group or association the credit union proposes to add to its field

of membership (provided the group has adopted bylaws). This requirement seems overly burdensome, particularly with respect to occupational groups. The requirement should be deleted.

Response: The Commissioner accepts this comment only as it applies to groups of employees of a common employer. One of the key tenants in adding additional groups to the field of membership of a credit union is that there is a common bond within the group to be added. The Commissioner believes that one of the objective criteria of such a common bond is the existence of an internal organization for the group. That organization is best demonstrated by the adoption of bylaws. It should be noted that the existence of bylaws is not dispositive. It is one indicia of organization. Thus, the submission of bylaws is only required if the group has adopted bylaws. The Commissioner does agree that a group made up of employees of a common employer will most likely not have adopted bylaws since their common bond is employment. Accordingly, the Commissioner has amended the regulation in question to clearly state that no bylaw submission will be required if the proposed group to be added consists of employees of a common employer.

Commenting Party: Meriwest Credit Union

Comment: We would like to have the requirement to submit the bylaws of any group and association the credit union would add to its field of membership deleted. This requirement may make it more difficult to attract groups and would increase paperwork for both the credit union and the Department.

Response: The Commissioner rejects this comment. For the reasons stated in the response to the last comment, the Commissioner believes that the adoption of bylaws by a group is objective evidence that the group has a common bond of association. Without bylaws, the credit union would have to present other objective evidence to establish the common bond the credit union proposes to add to its field of membership. The existence of bylaws makes the showing of a common bond that much easier. Thus, the Commissioner does not consider the requirement an unnecessary increase in paperwork. Finally, the commentator does not present any evidence supporting its assertion that the requirement will make it more difficult to attract groups. Accordingly, that portion of the comment is rejected.

Section 30.60(d)(3).

Commenting Party: Styskal, Weise & Melchinone

Comment: Section 30.60(d)(3) states that credit unions must provide a complete list of all organizations, groups, communities, etc. with each field of membership application, is unnecessary in our opinion when the credit union is simply trying to add a select employee group that does not otherwise fall into the "streamlined" approval process. We believe the Department should already have this information and the proposed language places an unnecessary burden on credit unions to produce what the Department should already have in its records. At a minimum, we believe there should be an exception for such a request or provide some further limitation for when a complete copy of the credit

union's filed of membership is necessary (for instance, if the request is to add groups that total over 5,000 potential new members).

Response: The Commissioner rejects this comment. The Commissioner believes that credit unions have information regarding their fields of membership readily available, while the Department would have to search its records to determine the complete field of membership of the applicants. Further, the Commissioner believes that any time a licensee makes an application with the Department, it is the burden of the applicant to provide all necessary information to process the application. The Commissioner does not believe it is in the Department's interest to provide exceptions from this requirement beyond the implicit exception provided for in the "streamlined" approval process.

Commenting Party: Meriwest Credit Union

Comment: We think requiring to send the Department a complete field of membership list each time a group is added to the field of membership of a credit union is burdensome and creates unnecessary paperwork for both the credit union and the Department. The Department already has the complete copy of the field of membership and certainly could request an update at any point in time.

Response: The Commissioner rejects this comment for the reasons stated in the last response. The Commissioner agrees that a credit union may be asked to provide an updated field of membership list at any time, and believes that it is most appropriate to request such an update each time a credit union requests permission to add additional groups to that list.

Section 30.60(d)(7).

Commenting Parties: Styskal, Weise & Melchinone, Meriwest Credit Union, David A. Conrad

Comment: Section 30.60(d)(7) states that a business and marketing plan are required when a credit union desires to serve a group or community with a potential membership greater than 5,000 persons. This numerical threshold is quire low and adds an additional burden on the credit union, and would increase paperwork for the credit union and the Department. Further, 5,000 persons seems low for a community. We strongly suggest that a higher number be used, such as 300,000.

Response: The Commissioner accepts this comment. The regulation was amended to provide that if the number of persons in the group that is proposed to be added to a credit union's field of membership is equal to or greater than 20 percent of the current membership of the credit union, or the proposed addition is a community, a copy of a business plan and a copy of a marketing plan shall be included as part of the application.

Section 30.60(d)(8).

Commenting Party: Styskal, Weise & Melchinone

Comment: Section 30.60(d)(8) which allows the Commissioner to obtain "any other information" he/she decides is necessary is, we believe, arbitrary, overbroad and unnecessary. We recommend that this kind of "catch all" provision and suggest credit unions strongly oppose this and similar provisions.

Response: The comment is accepted in part. The Commissioner agrees that the Subdivision (d)(8) is worded too broadly. However, the Commissioner believes that some flexibility is need so that he may consider factors that may impact on the necessary findings but are not specifically provided for in the regulation. Accordingly, the Commissioner amended Subdivision (d)(8) to provide that in processing an application to expand a credit union's field of membership, the Commissioner ask for and consider "such other information that bears upon a finding that the proposed field of membership is not contrary to the principles of organizing credit union, including principles of organizing credit unions based upon common bond of occupation, association, or groups within a well-defined neighborhood, community or rural district."

Commenting Party: Meriwest Credit Union

Comment: We think the ability for the Commissioner to obtain "any other information" he/she decides is necessary is arbitrary, overbroad, and unnecessary. We recommend that this "catch all" provision be deleted.

Response: The Commissioner rejects the comment calling for the deletion of Subdivision (d)(8). However, as stated in the response to the last comment, the Commissioner has modified the wording of Subdivision (d)(8) to narrow its breadth.

Section 30.71.

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Comment: Section 30.71 provides certain definitions in connection with the "streamlined" expansion process regarding a credit union's field of membership. In Section 30.71(c) the numerical limitation of 1,000 is somewhat low and we recommend that the number be raised to a more reasonable number, such as 5,000. Independent of what the numerical limitation is, we request that the language be further clarified to state at what point in time the group's number is to be "measured." We ask that Subdivisions (c)(1) and (c)(2) be amended to read "At the time the application is made, the total number of members/employees . . . "

Response: The Commissioner rejects the comment in part, and accepts the comment in part. In deciding to propose a "streamlined" process to allow credit unions to expand their fields of membership, the Commissioner considered other similar schemes in other jurisdictions. None of the other states that allow for such "streamlined" field of membership expansions allow the process to apply to groups of

more than 1,000. And, the National Credit Union Administration restricts its "streamlined" process to groups of 500 or less. The Commissioner believes that the Department will go to the maximum number used by other states. The Commissioner reserves the right to increase that number in future rulemakings. The Commissioner accepts the suggestions that Subdivisions (c)(1) and (c)(2) include the clause "At the time the application is made . . ." It should be noted that through a clerical error, only Subdivision (c)(2) was modified when the Commissioner published the 15 day changes. However, the Commissioner believes that the change is technical in nature and that the intent to accept the second part of the parties' comments was demonstrated by the modification of Subdivision (c)(2). Accordingly, Subdivision (c)(1) has been similarly modified in the final changes to the regulations included with this document with out conducting another 15 day comment period.

Commenting Party: David A. Conrad

Comment: The number of 1,000 members appears low. I believe the corresponding number for the National Credit Union Administration is 3,000. Also, it says that a select group is a group of individuals based upon a common bond of occupation. Perhaps it was your intention not to include churches, benevolent groups, and other non-work related associations, but I would think they could also be included as "select groups.

Response: The Commissioner rejects the comment regarding the number of individuals that make up a "select group" for the reasons stated in the response to the previous comment on this Subdivision. Additionally, it should be noted that the NCUA uses a number of 500, not 3000. The Commissioner rejects the comment regarding the additional of non-work related associations being included in the definition of "select groups." The suggestion exceeds the scope of the proposed rulemaking. Further, the Commissioner believes that it a common bond is obvious when a group of persons have a common employer. Such a common bond may not be as evident in a non-work related association. Accordingly, the Commissioner believes that it is best to leave an expansion of the field of membership of a credit union that includes non-work related associations to the application process set forth in Section 30.60 and 30.61, thereby requiring the proving of the common bond of such associations.

Commenting Party: California Credit Union League

Comment: We seek clarification that the 1,000 threshold refers to current employees and does not take into account family members. This interpretation would be consistent with the current policy of the NCUA that does not consider family members when considering expedited field of membership approval for federal credit unions.

Response: The Commissioner rejects this comment. The definitions in question revolve around membership in an occupational group or employment by a common employer. The Commissioner believes that the definition clearly does not include family members of persons belonging to such groups. While there may be instances when both a husband and wife or other family members are employed by

a common employer or are part of the same occupational group, such instances are not common and are will not be statistically significant in determining the number of persons in such groups.

Section 30.72(b).

Commenting Party: California Credit Union League

Comment: We suggest that the primary approval time for an application to participate in the "streamlined" field of membership expansion process should be reduced to 45 days rather than the 60 days proposed in Section 30.72(b)(1). We believe that due to the relative ease in determining the application that 45 days gives the Department ample time to make its decision.

Response: The Commissioner rejects this comment. In talking with many credit unions, the Commissioner believes that virtually all of the 200 plus licensees will apply for approval to participate in the process. Due to the anticipated crush of applications immediately upon the regulations becoming final, the Commissioner believes that the proposal presents a more realistic timeframe within which to properly consider and decide the applications.

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Comment: Section 30.72(b) provides the time frames and approval for an application to be able to participate in the "streamlined" field of membership approval process. However, this provision appears ambiguous and we are concerned that proposed Section 30.72(b) could lead to additional delays. Given the existing delays occurring at the Department for the review and approval of applications, we believe: (i) that the application be deemed "complete" as opposed to "filed" and therefore approved on the 60th day; (ii) that the provision provide for a specific (short) time frame for notifying the applicant when an application is complete or incomplete; and (iii) that the Department should only be allowed to extend the period for deciding an application in accordance with Government Code section 15376(h) (which provides for "good cause").

Response: The Commissioner rejects this comment. First, the Commissioner does not know if an application is "complete" so as to allow the application to be determined until the application is reviewed. Consequently, the Commissioner believes the appropriate word to use is "filed." If the time period were changed to coincide with the determination of the completeness of the application, the 60 day period within which the decision is to be rendered would be delayed. Second, Section 5.6183 provides the time frames for processing an application to participate in the "streamlined" approval process. Section 30.72(b) is entirely consistent with those timeframes. Since the outer period within which the Commissioner may decide an application to participate in the "streamlined" approval process is the same the date set forth in Section 5.6183, Section 15376(h) is inapplicable when determining whether a decision on such an application may be extended.

Section 30.72(d).

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Comment: We believe that Section 30.71(d)(3) which grants the Commissioner the ability to revoke the approval of a credit union to participate in the "streamlined" field of membership expansion process without a hearing of any kind is completely unreasonable and appear to violate a basic right to due process, including the opportunity to be heard. Therefore, the provisions should be deleted or allow a credit union the right to due process, including a right to a hearing.

Response: The Commissioner rejects this comment. A due process argument arises when a right is impaired by the government's action. There is no right of any variety created by when a credit union is approved to use the "streamlined" application process. To be a right, a credit union would have the ability to add select groups to its field of membership without the approval of the Commissioner. The regulations deem an application under the "streamlined" process to be approved through the passage of time, but the Commissioner may at any time prior to that date passing deny the "streamlined" filing and require the credit union to file a formal application to expand its field of membership. Further, any credit union may apply to expand its field of membership under Sections 30.60, even those who have been approved to use the "streamlined" application process. Thus, the loss of the use of the "streamlined" process does not foreclose the addition of groups to the field of membership of any credit union. Accordingly, no right is impaired by the loss of the ability to use the "streamlined" application process.

Section 30.73.

Commenting Party: California Credit Union League

Comment: We are unclear as to how a state credit union is to determine when the report required by Section 30.73 is deemed filed with the Commissioner. Unless sent by Certified Mail or Next-day Delivery, a credit union would not know when the Department actually receives the report. We encourage the Department to consider the date of filing to be the date of the postmark of the report.

Response: The Commissioner rejects this comment. The Commissioner believes that it is appropriate to have the date of receipt of the report as the date from which the 10 days runs. It is only when he or she actually has the report in hand that he or she knows of the intention to expand the credit union's field of membership. Credit unions are not without protection against misdelivered mail. Evidence Code Section 641 provides that a letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. Provided the credit union can show it properly mailed its report, the law presumes it was delivered. If the credit union wanted proof of the date the report was received, it could send a copy of the first page of the report with a self addressed stamped envelop and request the Department stamp the copy "received" with the date of receipt.

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Comment: Section 30.73 begins by stating that an "eligible" California credit union's application to add a select group is deemed approved by the Commissioner based upon the satisfaction of various requirements. However, "eligible" is defined in Section 30.71(a) to mean that the "Commissioner has granted eligibility to the credit union and that the eligibility remains in full force and effect." This definition appears rather circular and seems to be more useful if it were defined to stated that the " . . . Commissioner has granted eligibility to the credit union in accordance with Section 30.72 to add a select group without the prior approval of the Commissioner and that the eligibility remains in full force and effect."

Response: The Commissioner rejects this comment. The comment is unclear. Additionally, the Commissioner does not believe the comment adds anything of substance or value to the definition of "eligible." Sometimes, the addition of words does not clarify anything, it is just more.

Section 30.73(a).

Commenting Party: Meriwest Credit Union

Comment: We think the requirement of filing a report with the information specified in Section 30.73(a) places an undue burden on the select group being added and would cause delays in groups gaining membership to the credit union. We also think that the number of persons limitation of 1,000 persons is too low. We recommend raising the threshold to 5,000 persons.

Response: The Commissioner rejects this comment. A credit union can not just add members to its field of membership on a whim. The law provides that the field of membership may only be amended through the approval of an application to the Commissioner. Section 14155 requires the Commissioner to make certain findings with regard to an application to expand a credit union's field of membership. If a credit union is approved to participate in the "streamlined" approval process, the Commissioner makes certain findings with regard to the credit union so that he or she may presume that Section 14155(f), the finding of economic feasibility is satisfied. However, the credit union still bears the burden of proof to show that the balance of the applicable factors of Section 14155 is satisfied. Thus, the credit union must provide certain information with regard to the group that it intends to add to its field of membership. The information called for in Section 30.73(a) is necessary to show, among other factors, that a common bond exists with in the group to be added to the field of membership. The Commissioner believes that the "streamlined" approval process is the as far as he can go to reduce the timing of field of membership expansion applications and still satisfy the requirements of Section 14155. For the reasons set forth in the Commissioner's response to Meriwest Credit Union's comments regarding 30.71(c), the Commissioner rejects the request to increase the maximum number of persons that make up a select group to 5,000.

Section 30.73(b).

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Comment: The second sentence of Section 30.73(b) (now Section 30.73(a)(2)) states that the "Commissioner can reject a group to the credit union's filed of membership, or for any other good cause" is again overly broad, arbitrary and unnecessary. Indeed, the language of 30.73(b) does not appear to track the intent stated in the Initial Statement of Reasons that the "streamlined" process be a "notice-only" procedure. Therefore, the provision should be deleted or make rejections based on the Commissioner's authority under Section 30.61 which allows denial of an application if the field of membership is contrary to the principles of organizing credit unions, or the economic feasibility is inadequate. In addition, the Commissioner is allowed to control group expansion under Section 30.72 by revoking a credit union's eligibility to participate in the "streamlined" approval process.

Response: The Commissioner rejects this comment. There is a misconception that the "streamlined" approval process is the equivalent of a "notice-only" process. As noted above, Section 14155 requires the Commissioner to make certain findings with regard to an application to expand a credit union's field of membership. Without express statutory authority otherwise, the findings have to made with regard to every field of membership expansion, no matter how small the group to be added. The "streamlined" approval process allows the Commissioner to make rapid decisions regarding additions to a credit union's field of membership based upon the characteristics of the credit union and the proposed group. Consequently, the purpose of the report called for in 30.73(a) is to give the Commissioner the information necessary to make the decision whether to require a formal application under Section 30.60 or to allow the expansion to the field of membership to be deemed to be approved without formal action. In this vein, the commentators' statement regarding the content of Section 30.73(b) (now Section 30.73(a)(2)) is misguided. Section 30.73(b) provides that either the report will be accepted, with the absence of comment from the Commissioner being deemed to be acceptance, or the report will be rejected. However, a rejection of the report is not a rejection of the addition of a group to the field of membership, but rather a rejection of the group being approved under the "streamlined" approval process. The rejection of the report may be for a number of reasons, including the failure of the credit union to provide all of the necessary information called for in Section 30.73(a). Even if the decision is made that the group does not meet the definition of the a "select group" as set forth in Section 30.70, that rejection does not rise to the level of a formal denial of the addition of the group. Rather, the group may simply be ineligible to be included in the "streamlined" approval process. The credit union may still request approval of the addition of the group through the formal application process set forth in Section 30.60.

Section 30.101.

Commenting Party: Consumers Union

Comment: We oppose the proposed repeal of those portions of section 30.101 which require shorter hold periods for some items than the items permitted by federal Regulation CC. In particular, existing section 30.101 provides enhanced consumer protection in its subsection (c)(3), applying to "on-us" drafts, and in its rule that no extra day is provided when a deposit is made at an off-premises ATM. The fast "on-us" availability regardless of the location of the branch of deposit is consistent with consumer expectations that funds should be available very promptly when the draft is written on and deposited into the same credit union.

We do not oppose the goal of added consistency between state regulations and federal law in those areas where state law appears less protective of consumers than federal law. We are opposed to consistency which eliminates consumer protections and extends the time before funds become available to consumers. We suggest that any revision of section 30.101 should preserve those California time periods which are shorter than required by Regulation CC.

Electronic funds transfer technology has accelerated the pace at which checks move through the banking system. Consumers already are not reaping the benefit of that increased speed through shorter hold times. The Department of Financial Institutions would do a disservice to California consumers by repealing those portions of the existing credit union regulations which require shorter hold times than federal law.

Response: The Commissioner rejects the comment. Existing regulation section 30.101(c)(3) provides that the reasonable time by which a depository credit union must permit a member to draw on an item shall not be later than the opening of business on the next business day after one business day following the date of deposit, for any item drawn on the depository credit union. In other words, under section 30.101(c)(3) cited by the Commenting Party, "on-us" drafts must be made available for withdrawal on the second business following the date of deposit.

Under Regulation CC (12 C.F.R. Section 229.10(c)(vi)), generally speaking, a credit union is required to make an "on-us" check available for withdrawal no later than the business day after the banking day on which the funds are deposited. Accordingly, generally speaking, the hold periods for on-us checks under Regulation CC are shorter than or at least equal to the limits under existing Section 30.101 in most cases.

The Commenting Party also states that "no extra day is provided when a deposit is made at an off-premises ATM."[4] Under existing regulation section 30.101(b)(3) deposits made through proprietary ATMs, generally speaking, are subject to the same hold periods as deposits made in person.[5] Under existing regulation section 30.101, the hold periods are:

[4] The Commenting Party does not define its use of the term "off-premises ATM." Existing regulation section 30.101 covers only "automated teller machine branch offices," which the Department interprets as referring to proprietary ATMs, that is, those ATMs which are owned and operated by a credit union.

[5] Existing regulation section 30.101(b)(3) defines "day of deposit" as meaning the day on which a member transfers possession of an item to a credit union for deposit. In cases where the deposit is made after the close of business, the day of deposit is the next business day of the credit union. With respect to deposits made by ATMs, the close of business is determined with reference to the cut-off time established by each credit union. A deposit

$100 or less checks; U.S. Treasury checks; state/local government checks	1st business day following the banking day of deposit
On us checks; cashier's, certified, teller's depository checks	2nd business day following banking day of deposit
In-state checks	6th business day following banking day of deposit
Out-of-state checks	10 business day following banking day of deposit

Under Regulation CC, generally speaking, deposits of certain types of checks are to be made available on the business day following the banking day of deposit. These include deposits of Treasury checks, state and local government checks, cashier's checks, certified checks, teller's checks and on us checks.[6] Local checks must be made available for withdrawal by the second business day following the banking day of deposit. Nonlocal checks must be made available no later than the fifth business day following the banking day of deposit.

The next-day availability afforded by Regulation CC generally applies where a check is deposited in person to an employee of a credit union. Second-day availability, and not next-day availability, would apply in the case of deposits of checks made at a proprietary ATM. However, Regulation CC specifically requires that U.S. Treasury checks deposited into an account of the payee and the first $100 of a check be subject to next-day availability even if they are made at an ATM, which would be the same result under existing regulation Section 30.101. State and local government checks, however, deposited by ATM would be subject to second-day availability under Regulation CC rather than next-day availability under existing regulation Section 30.101 (assuming such items are deposited before the ATM cut-off time).

While differences may exist between the hold periods specified in existing regulation Section 30.101 and Regulation CC, the Commissioner does not believe that any such differences will significantly impact consumers in an adverse manner. As shown above with respect to the objections raised by the Commenting Party to specific provisions of the regulations, a determination of the applicable hold periods under existing regulation section 30.101 and under Regulation CC is not always straightforward. The Commissioner still believes, after considering the comments of the Commenting Party, that having two different sets of regulatory requirements governing the hold periods for deposits creates an unduly complicated regulatory framework.

Section 30.102.

Commenting Party: California Credit Union League

made after the cut-off time will not be deemed to be made until the following business day. Cut-off times do not necessarily correspond to the time a credit union closes for business, and are often earlier.

[6] 12 C.F.R. §229.10.

Comment: We are concerned that the proposed regulations would establish maturity timeframes (five years or more) for specified assets that would be now considered "risk assets." The Initial statement of Reasons for this subject states that the Commissioner believes that assets with a longer maturity term "generally pose more interest rate and liquidity risks to a credit union" yet fails to provide data "to support a finding that the suggested changes are necessary." While this may be appropriate, the League calls upon the Department to be consistent. If it does not adopt industry-suggested changes because data is not provided "to support a finding," the Department should not automatically make changes without providing data that supports its findings.

Response: The Commissioner rejects this comment. The Commenting Party expresses concern over the establishment of maturity timeframes for assets which would make certain assets risk assets that currently are not included as risk assets. The Commissioner believes that the existing definition of "risk assets" is in need of updating, in part, because it does not take into account maturity dates in defining what may pose a risk and what may not. The Commenting Party does not appear to disagree with the general proposition that assets with a longer maturity term generally pose more interest rate and liquidity risks, but seems to be concerned with how the maturity timeframes were arrived at. As noted in the Initial Statement of Reasons, the definition of "risk assets" proposed to be adopted is substantially the same as the one previously contained in the regulations of the National Credit Union Administration ("NCUA") at 12 C.F.R. 700.1(j).[7] The NCUA definition of "risk assets" is one with which the industry and the Department's examination staff is familiar because it was the definition previously applied by the NCUA. The Commissioner believes that this definition, as proposed, adequately defines "risk assets" for the purposes of the reserve requirements under state law. The Commenting Party also objects to the Commissioner not providing data to support the necessity for establishing the maturity timeframes. The Commissioner disagrees with the Commenting Party that he is required to have an empirical basis for any proposed change in his regulations. In accordance with Section 10 of the regulations of the Office of Administrative Law, necessity may be established by not only fact, but also by expert opinion. Under this regulation an "expert" is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question. The Commissioner qualifies as such an expert, and his expert opinion may serve as a basis for establishing the necessity for the regulation.

Commenting Party: Western Corporate Federal Credit Union[8]

Comment 1: Subparagraphs (B), (C), (D), (E), (F), and (G) of Paragraph (4) of Subdivision (a) of Section 30.102 refer to "remaining final maturity of 5 years or less." These provisions should be clarified as to whether the stated final maturity or the weighted average life is the determining factor.

[7] The NCUA regulations no longer contain a definition of risk assets. Changes in the National Credit Union Act required the NCUA to adopt regulations applicable to federally insured credit unions to implement the prompt corrective action requirements of the Act. The prompt corrective action requirements eliminated the need for a definition of "risk assets."

[8] The comments from WesCorp were not received until after the close of the public comment period. The Commissioner nonetheless responds to the comments as if timely received.

Response: The Commissioner rejects this comment. The Commissioner believes that the reference in the regulation to "remaining final maturity" is a sufficiently clear reference to the date on which an asset by its own terms matures, or, as referred to by the Commenting Party, the "stated final maturity" date. The intent of the Commissioner in proposing this regulatory change is primarily to update the definition of risk assets. The definition of "risk assets" which was used as a model is the definition which was previously used by the National Credit Union Administration. It is a definition which is familiar to the credit union industry and the Department's staff, and the premises underlying this definition are reasonable to the Commissioner. The NCUA definition of "risk assets" utilized "remaining final maturity," which, as interpreted and applied by NCUA, referred to the date on which an asset by its own terms matures. This is the terminology that was used in the NCUA definition of "risk assets," and it referred to the date on which an asset by its own terms matures. As pointed out by the Commenting Party the "weighted average life" may be a more accurate gauge of interest rate risk. However, "weighted average life" is a more complex concept, and its use instead of "remaining final maturity" would require a non-federally insured credit union to perform calculations or otherwise obtain weighted average life values for each accounting period -- a requirement not heretofore imposed by the Commissioner. Before imposing such a requirement, the Commission would need to determine whether the regulatory benefits outweigh the regulatory burden.

Comment 2: Subparagraph (P) of Paragraph (4) of Subdivision (a) relates to items with "remaining maturities greater than 5-years are exempt from risk assets." It is unclear as to why the accounting designation (hold-to-maturity, available-for-sale, or trading account) should create an exemption.

Response: The Commissioner rejects this comment. The proposed regulation does not create exceptions based on accounting treatment. The proposed regulation clearly states that the exemption applies if specified criteria are met "irrespective of whether or not the asset is being carried on the credit union's records at the lower of cost or market, or are being marked to market value monthly."

Comment 3: Sub-subparagraph 3. of Subparagraph (P) of Paragraph (4) of Subdivision (a) needs to be more clearly defined. For example, if the floating rate coupon is defined to be 2 times 3-month LIBOR minus 4%, with appropriate caps and floors, would such a holding be deemed to be a risk assets. What about other floating rate instruments that have embedded rate movements (caps and floors) or other limitations on full indexing?

Response: The Commissioner rejects this comment. As noted above, the intent of the Commissioner in proposing this regulatory change is to update the definition of "risk assets." In doing so, the Commissioner has chosen a definition utilized by the NCUA. The definition is one which is familiar to the regulated public and Department employees and will facilitate its implementation. It is impossible to anticipate every interest rate configuration as suggested by the Commenting Party. In case a credit union has a question whether an asset is subject to an exemption, the credit union can always seek clarification from DFI. The example provided by the Commenting Party calls for an interest rate of 2 times 3-month LIBOR minus 4%. The exclusion in Subparagraph (P) does not apply where the interest rate is a multiple of a change in a related index.

Section 30.104(b)(1).

Commenting Party: Turner, Warren, Hwang & Conrad, Accountancy Corporation

Comment: This regulation section on bonding requirements was not recommended for change. There was discussion at one time of changing the wording in this section so that the state-chartered credit unions could get the same type of bond as federally chartered credit unions.

Response: The Commissioner rejects this comment. The Commissioner did not propose any change to existing regulation Section 30.104. The comment is unclear and goes beyond the scope of the Commissioner's proposed regulatory changes

Section 30.105.

Commenting Parties: Styskal, Weise & Melchinone; Meriwest Credit Union

Summary of Comment: First, the proposed amendments to the regulation states that bylaws and amendments become effective when a copy, certified by the secretary has been "approved and filed" with the Commissioner. There is nothing regarding how such bylaws, or amendments thereto, are approved. Given the processing delays in the current bylaw approval process, the Department should set forth a clear process including specific time frames for processing a bylaw approval request. Second, the requirement that a credit union provide a complete copy of the existing bylaws so that the Department can assure itself that all "previous amendments to the bylaws have been properly incorporated" into the bylaws is overly burdensome. Third, we recommend deleting the requirement in proposed Section 30.105(b)(2) that a credit union must provide "such other information the Commissioner may require." That requirement is overly broad.

Response: The Commissioner accepts the comment, except as to the request that a time frame be incorporated into the regulation. It should be noted that there is no time frame set forth in Section 30.103(b), the regulation that currently governs the processing of bylaw approval applications. The Commissioner believes that a specific time frame is not mandated by Permit Reform Act (Government Code Section 15374, et seq.) since the approval of bylaws, and amendments thereto, are not authorizations to engage in a particular act or activity. Bylaws are the internal rules regarding the operations of a credit union. Consequently, the Commissioner believes that a reasonable time frame is implied by both the current and proposed regulations. The lack of a specific time frame is due to the various levels of complexity and the number of bylaw amendments that may be proposed. Due to that disparity, the processing of bylaw amendments may vary between several days and several months.

Section 30.300(a)(1).

Commenting Party: Provident Central Credit Union

Comment: Setting a yield in an investment policy is arbitrary. Yield is dependent on market conditions and cannot be exactly defined. The Commenting Party suggests setting a spread as more realistic. Diversification also obfuscates a portfolio manager's decision making. What is relevant today may not be relevant tomorrow. If because of current market conditions it is prudent to keep all funds in short-term money market accounts, but a year from now the credit union should be lengthening assets, this should be left to the decision making authority of the Asset Liability Committee.

Response: The Commissioner rejects this comment. The Commenting Party is objecting to the requirements of the existing regulation, not the proposed changes. The proposed changes do not change the requirements of the existing regulation with respect to the need to have an investment policy which covers yield and diversification. Neither the existing regulation, as applied by the Department for many years, nor the proposed regulation, requires that a credit union specify numerical yield goals in its investment policy.

Section 30.300(b)(1) - (6).

Commenting Party: Western Corporate Federal Credit Union

Comment 1: The definition of "authorized financial institution" in conjunction with Subdivision (b)(1) - (6) is not clear on whether a credit union can sell Fed Funds to the United States branch of a foreign bank.

Response: The Commissioner rejects this comment. The authorization for a credit union to sell federal funds is contained in paragraph (1), and does not derive from paragraphs (2) through (6). The changes to paragraph (1) do not change the scope of the existing authorization with respect to foreign banks. Under the existing regulation, credit unions are not authorized to sell federal funds to a foreign bank, unless its deposits are insured by the Federal Deposit Insurance Corporation. The proposed regulation does not change this.

Comment 2: The proposed changes remain silent in the area of financial derivatives. While these transactions are not "investments" in the strict sense, they are typically referred to under the "investments" umbrella. The NCUA has approved a pilot program that provides federally chartered credit unions a fast access approach to the derivatives market. The California DFI is urged to define a set of simple and efficient steps for California state chartered credit unions to take advantage of the NCUA approved program and be able to operate on an equal footing with their federally chartered counterparts.

Response: The Commissioner rejects this comment. The changes proposed in this rulemaking are primarily to clarify the investment authorizations contained in the existing regulations. The comment suggests that the Commissioner adopt regulations authorizing credit unions to take advantage of the NCUA-approved program described in the comment. However, the changes suggested by this

comment goes beyond the scope of the changes being proposed by the Commissioner. Such changes would require study and consideration by the Commissioner.

Section 30.300(c)(4).

Commenting Party: Provident Central Credit Union

Comment: By definition a "short sale" is a commitment to sell before an asset is owned. Short sales are effective vehicles for hedging a fixed rate mortgage portfolio. If the specific loan does not close then the next fixed rate loan closed can be substituted for the short sale. Preventing this activity places the credit union at greater interest rate risk.

Response: The Commissioner rejects this comment. The proposed changes do not change the existing law with respect to short sales. In addition, by its terms the regulation applies only to investments authorized by section 30.300(b) which does not include investments in loans.

Section 30.300(d)(2).

Commenting Party: California Credit Union League

Comment: A technical change to the definition of "authorized financial institution" should be made to add "any insurer or guarantor authorized by Section 14858 of the Financial Code." This would allow California credit unions to contract with privately insured credit unions in other states whose private deposit insurer is acceptable in California.

Response: The existing regulation does not include credit unions within the definition of "authorized financial institution." The proposed changes would include federally insured credit unions. The suggestion that privately insured out-of-state credit unions should be given the status of an "authorized financial institution" is beyond the scope of the changes proposed by the Commissioner. Whether to adopt such a suggestion involves broader policy issues that need to be studied by the Commissioner before proposing the suggested change.

Section 30.301.

Commenting Party: Styskal, Wiese & Melchione

Comment: Subdivision (b) authorizes the charge-off of the aggregate balance of two or more obligations, if no one obligation has a balance which exceeds $20,000 and if a list of the obligations, by borrower and amount charged-off, is attached to and made a part of the minutes of the board. The provision is unclear whether the charge-off is by borrower or as a total.

Response: The Commissioner rejects this comment. Subdivision (a) of the existing regulation requires the minutes of the board of directors to include an authorization of, among other things, charge-offs of accounts (i.e., loan accounts). Thus, the existing regulation -- which is unchanged by the Commissioner's proposal -- requires each charged-off obligation to be separately authorized in the board minutes. The proposed change would allow an authorization to cover a group of accounts, as long as no one obligation has a balance exceeding $20,000 and a list of the obligations by borrower and amount is attached to and made a part of the minutes. Without proposed Subdivision (b), the board minutes would need to contain a separate authorization for each account charged off, regardless of size. The Commissioner does not agree that Subdivision (b) is unclear.

Section 30.304.

Commenting Party: California Credit Union League

Comment: We disagree with the requirement that would require a state-licensed credit union to receive prior written approval of the Department before purchasing loans (notes) of any liquidating credit union regardless of charter or location of the liquidating credit union. This requirement should be eliminated. The Initial Statement of Reasons states that the reason for this proposed requirement is based on the concerns of the liquidating credit union rather than those of the purchasing credit union. We believe those concerns can be addressed in the Department's oversight of the liquidating credit union. The Department would have no regulatory oversight of a federal credit union or of a non-California state credit union that is choosing or being liquidated. Thus, this new requirement would create undue and unneeded burdens on the purchasing credit union seeking to assist another credit union. The purchasing credit union would be required (in the proposed regulation) to establish a special reserve to protect against any potential losses and would still be subject to the Department's regular oversight.

Response: The Commissioner rejects this comment. The existing regulation in Subdivision (e) requires that a credit union obtain the Commissioner's written consent before it purchases any note from a liquidating credit union. The changes proposed by the Commissioner to this Subdivision are only technical in nature. The Commenting Party's suggested change to eliminate altogether the consent requirement goes beyond the scope of the changes proposed by the Commissioner. Safety and soundness concerns require that the Commissioner exercise oversight prior to the purchase, not after a purchase has occurred. Any change in this requirement would need further study and consideration by the Commissioner.

Section 30.306.

Commenting Party: Evangelical Christian Credit Union

Comments: To our knowledge, California credit unions have exercised their current authority for many years without compromise to their safety and soundness. We know of no circumstances whereby a credit union was impaired by acting within the current regulation. If such instances occurred, we would ask that the DFI establish a pattern or reference that such situations are (a) likely to occur in the future, and (b) they are likely to occur in such numbers that it is statistically meaningful. The Commissioner should not unilaterally reduced the investment authority from 20 percent to 10 percent.

Response: The Commissioner rejects this comment. The Administrative Procedures Act does not require that the Commissioner show statistical significance or data in support of a change in the regulation. The Administrative Procedures Act recognizes that expert opinion can satisfy the requirement to show necessity for the regulation. It is the Commissioner's view, as an expert, that the Department's oversight of a credit union's investments in fixed assets and service organizations at an earlier stage is more conducive to the safety and soundness of a credit union's operations, than trying to intervene at a later stage when such investments have reached the level of 20 percent of unimpaired capital and surplus. The Commissioner notes the significantly lower level of investment authority granted to federally chartered credit unions -- 5 percent of shares and retained earnings for investments in fixed assets (12 C.F.R. §701.36) and 1 percent of unimpaired capital and surplus for investments in shares, stocks, or obligations of an organization providing services associated with the routine operations of the credit union (12 U.S.C. 1757(7)(I)).

In addition, the Commenting Party states that California credit unions have exercised their current authority for many years without compromise to their safety and soundness. As noted in the Initial Statement of Reasons, very few, if any, of state-chartered credit unions have actually invested in amounts at or near the 10 percent limit. As such, there is no basis for the claim that the existing level of 20 percent is safe and sound. Also, the amended regulation as proposed does not establish an absolute limit on these types of investments, but only a threshold above which the Commissioner will be in a position to exercise oversight.

Comment 2: Investment in lands and buildings intended for future use by the credit union is entirely distinct and different from other investment authorities, and should be treated accordingly. The current and proposed regulation makes no distinction between sterile or non-earning fixed assets (i.e., buildings) and such assets that yield income for the credit unions. Buildings and portions of buildings purchased for future use may well produce income for the credit union. This has a far different affect on the credit union balance sheet than other non-income producing assets, which are a load on earnings. Income producing property purchased or constructed for future use should not be further limited. To limit such assets will have the adverse effect of causing some credit unions to "under-build" or otherwise inadequately plan for future space needs, resulting in future higher operating costs and business disruptions.

Response: The Commissioner rejects this comment. As noted by the Commenting Party, the treatment of Financial Code Section 14402/14403 investments and Section 14650/14651 investments in the aggregate is established in the existing regulation. The changes proposed by the Commissioner do not change this treatment. As such, the changes suggested by the Commenting Party go beyond the

changes proposed by the Commissioner. Whether to segregate the investment authorities between Financial Code Section 14402/14403 investments and Section 14650/14651 investments, and in what amounts, will require further study by the Commissioner before proposing the suggested change.

Comment 3: If the 10 percent limit is retained, we request that the 10 percent limit not apply to real income-producing property purchased or constructed for future use.

Response: The Commissioner rejects this comment. Under existing regulations, Section 14402/14403 investments are not differentiated in terms of whether or not they are "real income-producing property purchased or constructed for future use." As such, the changes suggested by the Commenting Party go beyond the changes proposed by the Commissioner. Whether the differentiation is warranted and supportable under the law will require further study by the Commissioner before proposing the suggested change.

Comment 4: We ask that any new regulation be clarified as to whether bona fide contracts to build will be grandfathered under the current limit in the event a more restrictive limit is adopted. Our credit union is currently in good-faith negotiations to build a pre-leased building on land already owned by the credit union. We are concerned that any new limitations may bring an existing good faith contract into question.

Response: The Commissioner rejects this comment. The proposed regulation in Subdivision (e) would grandfather investments that exceed the lower threshold limit as of the effective date of the amended regulation, if the investment was made in conformity with the law at the time the investment was made. This "grandfather clause" would not exempt investments that have not been made, but are in the negotiation stage, as of the effective date of the amendment. The Commissioner believes that licensees have had sufficient notice of the Department's efforts to lower the limit on these investments from 20 to 10 percent, and will have had sufficient time before the effective date of the proposed change to bring themselves into compliance.

Commenting Party: Arrowhead Central Credit Union

Comment 1: There is no specific rationale or factual material from the Department to support the change in the limit on investments subject to this section from 20 to 10 percent. Without an explanation, it is much more difficult for credit unions to provide meaningful input on the proposed rule under the State's Administrative Procedures Act. In addition, we believe that the development of rules, and public policy in general, should be more data driven.

Response: The Commissioner rejects this comment. The Administrative Procedures Act does not require that the Commissioner show statistical significance or data in support of a change in the regulation. The Administrative Procedures Act recognizes that expert opinion can satisfy the requirement to show necessity for the regulation. It is the Commissioner's view, as an expert, that the Department's oversight of a credit union's investments in fixed assets and service organizations at an earlier stage is more conducive to the safety and soundness of a credit union's operations, than trying to intervene at a later stage when such investments reach the level of 20 percent of unimpaired capital and

surplus. The Commissioner notes the significantly lower level of investment authority granted to federal credit unions -- 5 percent of shares and retained earnings in fixed assets (12 C.F.R. §701.36) and 1 percent of unimpaired capital and surplus in shares, stocks, or obligations of an organization providing services associated with the routine operations of the credit union (12 U.S.C. 1757(7)(I)).

Comment 2: Although the proposed rule continues to allow additional investments in credit union service organizations with the approval of the Commissioner, there are no standards in the rule for such approvals and there is no assurance that any such approval will be granted.

Response: The Commissioner rejects this comment. The proposed changes do not change the existing regulation in this regard. In other words, the existing regulation does not specify the standards for an approval. Accordingly, the comment goes beyond the scope of the changes proposed by the Commissioner.

Comment 3: Credit unions should have the option to pursue their business activities directly or through a credit union service organization. A credit union may conduct an activity through a service organization, rather than directly for the purpose of limiting potential exposure or to segregate a different business culture. An unintended consequence of lowering of the threshold may be that credit unions, when approaching the new, lower investment limit, may be forced to undertake new activities directly in a manner that may be more adverse to their safety and soundness.

Response: The Commissioner rejects this comment. The 10 percent limit is not an absolute limit, and therefore, credit unions should not feel forced into undertaking activities directly. The board of directors of each credit union bears responsibility for ensuring that the credit union operates safely and soundly, and should not permit a credit union to engage in any activity that is adverse to the credit union's safety and soundness.

Comment 3: Consideration should be given to splitting the Section 30.306 investments into two buckets. Federal credit union law and many state credit union laws segregate such investments into two buckets. For example, the investments in real and personal property and entities holding such property could be subject to a 7 percent limit, while the investments in credit union service organizations could be subject to a 13 percent limit.

Response: The Commissioner rejects this comments. The proposed regulation does not change the existing regulation which sets a single aggregate limit on investments in fixed assets and service organizations. As such, the suggested change goes beyond the scope of the Commissioner's proposed changes. Determining whether to establish "two buckets" and the limits on investments applicable to each would require further study by the Commissioner before any change can be proposed.

Section 30.401.

Commenting Party: Meriwest Credit Union; Styskal, Wiese & Melchione

Comment: There is no basis for the change. Making extensions, refinances, or revisions applicable to all loans instead of just delinquent loans will place a huge administrative burden on credit unions by forcing them to provide evidence that the borrower will be able to adhere to the terms of refinanced extended or revised obligations, particularly those that use holiday or summer skip-a-pay programs. The proposed regulation will substantially interfere with a credit union's ability to conduct business.

Response: The Commissioner rejects this comment in part. The proposed change does not necessarily require credit unions to conduct full-scale underwriting of each loan that is extended, refinanced, or revised. The proposed change requires that a credit union satisfy itself that a borrower has the ability to repay the borrower's loan and otherwise comply with the terms of the loan before the credit union agrees to extend, refinance, or revise the loan. What evidence will suffice depends on a number of variables, and the proposed regulation provides flexibility for credit unions to determine the manner in which they will comply. In between the time a loan is made and the time it is extended, refinanced, or revised, the financial condition of the borrower, in most cases, has changed. The Commissioner believes that it is as important that a credit union's decision to extend, refinance, or revise a loan be based on current information regarding the borrower's ability to comply with the terms of the loan, as it is when the credit union initially made the loan.

The Commissioner made changes to his proposal to allow for holiday or summer skip-a-pay programs.

Section 30.403, 30.404, and 30.405.

Commenting Party: Turner, Warren, Hwang & Conrad.

Comment: The Department, like the NCUA, should drop the requirement for regular reserve transfers. If there is a concern about the level of capital in non-NCUSIF insured credit unions, the law and regulations could be changed to apply only to non-federally insured credit unions. In that case, the capital requirement (read reserve requirement) could be either left as is or changed to be more PCA-like for non-federally insured credit unions.

Response: The NCUA's Prompt Corrective Action regulations (12 C.F.R. Section 702.401) do not eliminate transfers to regular reserves, so the Commissioner disagrees with the Commenting Party's statement. The proposed regulations do distinguish between federally insured and non-federally insured credit unions, and the reserve requirements contained therein apply only to non-federally insured credit unions. The level of reserves required for non-federally insured credit unions remains unchanged from the existing regulations.

Section 30.602.

Commenting Party: California Credit Union League

Comment: We are concerned about the impact of the proposed change to this regulation that would require all specified records (contained within the regulation) to be stored on-site rather than allowing their storage off-site. Our concerns are two-fold: costs involved with on-site storage and disaster recovery. On-site storage would require costly retail office space rather than less costly storage facilities. It is prudent for credit unions to store records off-site in the unlikely event of a disaster. The existing regulation allows for off-site storage of records and prompt accessibility by the Department upon request. If adopted as proposed and credit unions were required to maintain all of these records on-site, recovery from a disaster would be more complicated and expensive if at all possible. We also question why credit unions would be subject to this higher standard than banks.

Response: The Commissioner rejects this comment. The existing regulation requires that specified records be maintained permanently, and that other specified records be maintained for at least 5 years, *at the office of the credit union.* The proposed changes to this section do not change the existing regulation in this regard. Credit unions are currently required to maintain their books and records on site. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner.

Section 30.701(b)(3):

Commenting Party: Provident Central Credit Union

Comment: The number of delinquent loans in each category is not as relevant as the dollar amount. I would suggest that credit unions continue to report dollars and avoid the unnecessary work of compiling numbers for each category mentioned.

Response: The Commissioner rejects this comment. The existing regulation requires that a report of delinquent loans state "the aggregate number and total amount of loans delinquent at month end, in the categories shown in Section 30.400 of these rules." As such, the existing regulation already requires a statement of the number of delinquent loans in each category. The proposed changes to this section do not change this existing requirement. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner.

Section 30.701(c).

Commenting Party: Turner, Warren, Hwang & Conrad

Comment: This section allows a credit union to make the financial statements available to members in lieu of posting them in a conspicuous place. In such circumstances, it would be advisable to require that a notice be posted in a conspicuous place informing the members that the financial statements are available upon request.

Response: The Commissioner amended his proposal to incorporate the suggested changes.

Section 30.801.

Commenting Party: Meriwest Credit Union; Styskal, Wiese & Melchione

Comment: The proposed regulation takes away authority from loan officers by only allowing closed-end obligations to be extended twice during the term of the obligation (and any one extension may not be for more than two consecutive contractual payments). This change unduly interferes with the credit union's operations, and there is no reason for the change as the existing regulation appears to have served the credit union industry well.

Response: The Commissioner rejects this comment. The Commissioner believes that permitting a loan to be extended (that is, the borrower is being allowed to defer one or more payments) three times a year without limitation is excessive authority in the hands of a loan officer, who in most cases is not a member of management. The Commissioner believes that a credit union that would routinely extend all its loans to the extent allowable under the existing regulation would not be operating in a safe and sound manner. The proposed changes do not establish an absolute limit, but would require that there be board oversight over the practices of its loan officers.

Section 30.801(a)(2) and (b).

Commenting Party: Provident Central Credit Union

Comment: This change applies to loan officers. It specifically states that "a loan officer may extend . . .." Stating a function in the code implies giving authority to an individual which the credit union may not have granted. If the credit union only grants this authority to a Vice President, then the code should not presume to grant the authority to a lesser individual.

Response: The Commissioner rejects this comment. The proposed changes do not change the existing regulation, which currently is not subject to the qualification suggested by the Commenting Party. The Commissioner believes that it goes without saying that if a loan officer of a credit union, in accordance with the policies and procedures of the credit union or the terms of the loan officer's employment, is not authorized to grant extensions, this section would not override such lack of authorization.

Section 30.802(a)(1).

Commenting Party: California Credit Union League

Comment: This provision of the regulation would place an unfair regulatory burden on credit unions in requiring the purchase of private mortgage insurance (PMI) on a junior lien if the loan-to-value of the subject property is greater than 80 percent. As stated in the Initial Statement of Reasons, the Department acknowledges that the costs of the PMI cannot be imposed on the member-borrower if the loan at time of origination has a loan-to-value of 75 percent or less (California Civil Code Section 2954.12). We fail to see why credit unions would have this additional cost imposed by regulation when it is not imposed on other real estate lenders making these types of loans. The higher risks involved with junior liens are reflective in the interest rate (and points if applicable) of the loan. We believe this could reduce the ability of state-licensed credit unions to provide these types of loans to their membership forcing their members to obtain them from other providers. The League suggests that the PMI requirement not be made on junior liens, leaving the decision to the credit union.

Response: The Commissioner rejects this comment. The private mortgage insurance requirement is not new. The existing regulation already requires that a loan secured by a first or second lien on improved real property not have a loan-to-value ratio which exceeds 80 percent unless any excess will be insured by an instrumentality of the federal government or by a policy of private mortgage insurance. The proposed changes permits junior liens, not limited to second liens, and retains the existing requirement that the total obligations secured by liens on the property not exceed a loan-to-value ratio of 80 percent, unless the excess is insured by an agency or instrumentality of the federal government or by a policy of private mortgage insurance. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner. The elimination of the private mortgage insurance would be a significant change from the status quo which could have substantial impact on the safety and soundness of the industry. Such a proposal would require further study and careful consideration by the Commissioner.

Section 30.802(a)(1)(A).

Commenting Party: Meriwest Credit Union

Comment: We think the 60 percent of appraised value should be increased to 75 percent to allow credit unions to compete effectively.

Response: The Commissioner rejects this comment. The existing regulation provides for a 60 percent loan-to-value ratio. The changes proposed by the Commissioner do not include changes to the loan-to-value ratio limit applicable to unimproved real property. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner. The increase in the loan-to-value ratio for loans on unimproved real property would be a significant change from the status quo which could have substantial impact on the safety and soundness of the industry. Such a proposal would require further study and careful consideration by the Commissioner.

Section 30.802(a)(1)(B).

Commenting Party: Meriwest Credit Union

Comment: The 80 percent loan-to-value limit hinders credit unions from competing effectively. This loan-to-value ratio should be increased to 125 percent. Since other financial institutions do not have a private mortgage insurance requirement, we suggest deleting the last sentence of this subparagraph.

Response: The Commissioner rejects this comment. The changes proposed by the Commissioner do not include changes to the loan-to-value ratio limit applicable to improved real property or the private mortgage insurance requirement. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner. The increase in the loan-to-value limit from 80 to 125 percent would be a significant change from the status quo which could have substantial impact on the safety and soundness of the industry. Such a proposal would require further study and careful consideration by the Commissioner.

Commenting Party: Styskal, Wiese & Melchione

Comment: We believe the 80 percent loan-to-value limitation can hinder and/or is hindering credit unions from competing effectively. We believe that the regulation allows for one hundred percent (100%) loan-to-value ratios. We understand that the Department has routinely granted numerous waivers to credit unions up to 100 percent loan-to-value ratios without concern and therefore believe the credit union industry would be well served with such a change.

Response: The Commissioner rejects this comment. The changes proposed by the Commissioner do not include changes to the loan-to-value ratio limit applicable to improved real property or the private mortgage insurance requirement. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner. The increase in the loan-to-value limit from 80 to 100 percent would be a significant change from the status quo which could have substantial impact on the safety and soundness of the industry. Such a proposal would require further study and careful consideration by the Commissioner.

Section 30.802(a)(3).

Commenting Party: Styskal, Wiese & Melchione

Comment: The proposed regulation refers to "abbreviated loan guarantee" or "fidelity lenders abbreviated guarantee." It is unclear how such "abbreviated" policies compare with existing, industry standard policies such as PIRTs and FLAGs.

Response: The Commissioner disagrees that the proposed regulation needs clarification. The references to "abbreviated loan guarantee" and "fidelity lenders abbreviated guarantee" (FLAG) are used because this is the terminology that is most often used in the industry. However, because there is no single accepted terminology, in order to keep the requirements flexible, the proposed regulation establishes a performance standard to include any guarantee issued by a title insurance company with respect to the priority and validity of a credit union's security interest which includes, at a minimum a title search for all record owners and lienholders on the security property and a liability amount at least equal to the principal balance of the obligation.

Section 30.802(a)(4).

Commenting Party: Meriwest Credit Union

Comment: We recommend increasing the aggregate of all junior liens held by the credit union from $100,000 to $200,000.

Response: The Commissioner rejects this comment. The proposed changes to the existing regulation significantly liberalize the requirements. Under the existing regulation, the requirement for a title insurance policy applies to all loans of $50,000 or more. The proposed regulation liberalizes this requirement somewhat so that a title insurance policy would be required in the case of first liens and only where the aggregate of all junior liens is more than $100,000. For example, in a typical case where a borrower obtains a loan secured by a second deed of trust on his or her residence to purchase a new car or for home improvements, if the amount borrowed exceeds $50,000, the credit union would be required to obtain a title insurance policy. With the proposed $100,000 limit, an abbreviated loan guarantee would be required until the aggregate amount of junior liens on the property exceeded $100,000. The Commissioner believes that the $200,000 limit suggested by the Commenting Party is excessive.

Section 30.802(a)(5).

Commenting Party: Meriwest Credit Union

Comment: We recommend deleting this subparagraph requiring hazard insurance.

Response: The Commissioner rejects this comment. The existing regulation requires hazard insurance unless waived by the credit committee or the credit manager, which waiver may only be on loans which do not exceed the unsecured loan limits provided in the California Credit Union Law and in the credit union's written loan policy. The proposed regulation continues this requirement. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner. Elimination of the hazard insurance requirement would be a significant change from the status quo which could have

substantial impact on the safety and soundness of the industry. Such a proposal would require further study and careful consideration by the Commissioner.

Section 30.802(c)(1).

Commenting Party: California Credit Union League

Comment: Many credit unions have created auto-equity loans in which a courtesy lien is placed on the member-borrower's property so that the interest paid is available to be deducted from the member's income taxes. The primary security for the loan is the vehicle being acquired. In the event of default, the vehicle is the first option to be recovered to pay the outstanding loan balance. We encourage the Department to exempt these auto-equity loans from the title insurance requirement.

Response: The Commissioner rejects this comment. As noted above, under the existing regulation, the requirement for a title insurance policy applies to all loans of $50,000 or more. The proposed regulation would require a title insurance policy in the case of first liens and only where the aggregate of all junior liens is more than $100,000. In the vast majority of cases, the auto-equity loan referred to by the Commenting Party would be a junior lien, as most borrowers would have as a first lien the purchase money lien for the real property. The proposed $100,000 limit should be more than sufficient to exempt such auto-equity loans from the full title insurance requirement.

Section 30.804.

Commenting Party: Consumers Union

Comment: The proposed change repeals a regulation which restricts the imposition and collection of late charges on credit union loans. We oppose this change. The regulation provides a valuable additional protection which should not be disturbed.

Response: The Commissioner rejects this comment. Chapter 539 of the Statutes of 1998 amended Financial Code Section 15001 to eliminate specific limitations on the amount of late fees that a credit union could charge. Section 15001 provided that late fees may not exceed 3 percent of the payment due, or five dollars ($5), whichever is greater. Further, Section 15001 provided that when a loan is secured by real property or has an initial balance of at least $15,000 and a periodic percentage rate is applied to the loan balance as of the payment due date, the late charges may not exceed 6 percent of the payment due or $10, whichever is greater.

Chapter 539 replaced these specific limitations with the general authorization for credit unions to "assess charges as approved by the board of directors for failure to meet punctually obligations to the credit union." Further, Section 15001 now provides that any "late charge shall be made only once for each delinquent payment and shall be subject to Section 2954.5 of the Civil Code, Division 1.1 (commencing with Section 4000) of this code, and any other applicable law."

The existing regulation which implemented former section 15001 is out-of-date and no longer necessary. In addition, the existing regulation arguably is inconsistent with the broader authority granted by recently amended section 15001.

Section 30.1000.

Commenting Party: Turner, Warren, Hwang & Conrad

Comment: Section 14252 of the Credit Union Law allows the Commissioner to grant an exemption from the requirement for an opinion audit done by a certified public accountant. Should the regulation reflect the possible alternatives? NCUA has now published a recommended set of agreed upon procedures in the appendix to the Supervisory Committee manual.

Response: The Commissioner rejects this comment. As stated in the Initial Statement of Reasons, Financial Code section 14252 requires that credit unions undergo an annual independent audit, and authorizes the Commissioner to grant exemptions upon a finding that this requirement is not necessary or advisable. In accordance with this authority, the Commissioner currently is determining on a case-by-case basis whether an exemption from the annual audit requirement is appropriate and what actions a credit union should undertake in-lieu of audit, which may include a Supervisory Committee audit conducted in accordance with the guidelines of the National Credit Union Administration. The suggestion that the Commissioner include in this rulemaking the possible alternatives to an annual independent audit goes beyond the scope of what the Commissioner has proposed. Such a proposal would have to be studied, and a determination made as to whether defining the possible alternatives to an annual audit is feasible and appropriate.

PART 2
RESPONSE TO COMMENTS RECEIVED DURING 15-DAY COMMENT PERIOD

Section 30.60(d)(3).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: This requires the credit union submit a copy of its complete field of membership. If the credit union submits the listing, one of the DFI staff members will have to compare it to the most recent one on filed with the Department to make certain that it is correct. It might be easier and more efficient if the Department made the update and sent it back with the approval like the NCUA?

Response: The Commissioner rejects this comment. Section 30.60(d)(3) did not change between the Test of Proposed Changes and the Notice of Modifications to Text of Proposed Regulations. Accordingly, the Commissioner does not believe the comment is timely.

Section 30.60(d)(7).

Commenting Party: California Credit Union League

Comment: The California Credit Union League has concerns about the impact of the proposed changes contained within 30.60(d)(7) for small credit unions. With the change requiring a business plan to be submitted with an application for approval of an application to expand a field of member that exceeds 20% of the current membership of a credit union, small credit unions will be unfairly burdened and the requirement will act as a disincentive. We also believe that the requirement runs contrary to the "streamlined" approval process that can allow a credit union to add 1,000 persons to its field of membership without a business plan.

Response: The Commissioner rejects this comment. The Commissioner believes that if a credit union proposes to increase its field of membership by potentially 20%, the credit union should have a plan to service the new members, both in terms of deposits and loans, how to use the additional deposits, and how to control the liquidity issues arising from the increased membership funds. All of those issues should be considered in a business plan. In his experience, any financial institution that substantially increases its business but fails to address the issues associated with that increase flirts with disaster. The existence of a business plan provides the credit union with a solid blueprint to deal with the increase in its business. If a credit union is not preparing itself for the issues presented by such a potentially substantial increase in memberships, the Commissioner needs to know of that failure to plan. With regard to the comment regarding the interaction of Section 30.60(d)(7) and the "streamlined" field of membership approval process, the commentator does not appear to understand the operation of Section 30.73. The Commissioner may reject a report regarding a proposed field of membership expansion if "the Commissioner finds that it is necessary or appropriate to regulate the addition of the proposed occupational or employee
group . . . or for other good cause." Thus, the filing of a report does not mean that the Commissioner can not require a formal application under Section 30.60. Thus, if a credit union were to propose, under Section 30.73, to increase its field of membership by adding the members of a group that equals or exceeds 20% of the current membership of the credit union, the Commissioner would have the ability to reject that filing under Section 30.73 and require a formal application to be submitted by the credit union.

Section 30.60(d)(8).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: To avoid a possible legal hassle similar to the one experienced by the NCUA, I suggest that the word "bond" in the phrase ". . . based upon a common bond of occupation . . ." be pluralized.

Response: The Commissioner rejects this comment. The phrase is lifted verbatim from Section 14155 to clearly tie any additional requested information to the statutory language.

Section 30.71(c).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: A limit of 1,000 members is used in these sections. We would like the number expanded to 3,000.

Response: The Commissioner rejects this comment. As noted above, the Commissioner rejected this comment during the initial round of comments.

Section 30.73.

Commenting Party: California Credit Union League

Comment: We believe there should be a technical change to this Section is needed. Within subsection (a)(1)(E), the proposed new language is unclear regarding what is to be submitted. We believe that the Department intended to have the bylaw amendment signed by the secretary or assistant secretary. Also, we believe that the Department should be able to return on of the copies of the amendment to the bylaws of the credit union within 10 days of its approval rather than the 30 days proposed in Subdivision (c).

Response: The Commissioner rejects this comment. A certificate of secretary is described in Section 30.41. The Commissioner believes that it is common knowledge that any certification by its nature requires execution by the person making the certification. With regard to the return of the bylaw amendment, the bylaw amendment is effective when it is approved or is deemed to be approved. Thus, the physical stamping of the approval of the Commissioner on the bylaw amendment does not make it "any more legal;" it completes a physical record of the approval. The return of the amendment with the approval endorsed thereon, while an important record, is the completion of a ministerial task. The Commissioner believes that his staff should have a prudent cushion of 30 days within which to complete that task.

Section 30.73(a)(1)(E).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: For clarification, it is suggested that the phrase "of the credit union" be added to the end of the sentence. I wasn't certain until I got to the next page which secretary was doing the certification.

Response: The Commissioner rejects this comment. The Commissioner believes that the context of the regulation and the provisions of Section 30.41 are sufficient to indicate which secretary is making the certification.

Section 30.73(a)(2).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: It does not seem that the first sentence of Section 30.73(a)(2) is necessary.

Response: The Commissioner rejects this comment. Section 30.73(a) must be read as a whole. If the reader focuses only on the requirements of the Section and skips over the details for a moment, the Section reads as follows:

> "(a) An application by an eligible California credit union to add a select group to its field of membership shall be deemed approved by the Commissioner, if the following requirements are met:
>
> "(1) Not less than 10 business days before adding the proposed select group to the credit union's field of membership, the credit union shall file with the Commissioner a report . . . [and]
>
> "(2) The Commissioner does not reject the report called for in Subdivision (a)(1) within 10 business days after filing."

Section 30.105.

Commenting Party: California Credit Union League

Comment: We believe the intent of the Department is to require state credit unions to submit two full copies of their bylaws when submitting an amendment other than those relating to fields of membership. The League encourages the Department to state in the Final Statement of Reasons that this requirement is not intended to include field of membership applications.

Response: The Commissioner rejects this comment. The addition of any group to the field of membership of a credit union requires an amendment to the bylaws of that credit union. Other than what is set forth in the regulations, the Commissioner sees no reason why an application to amend the field of membership of a credit union should be treated in a different manner than all other bylaw amendment applications.

Section 30.105(b)(1).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: Again, clarification regarding the fact that it is the secretary of the credit union that is making the certification might be helpful.

Response: The Commissioner rejects this comment. The Commissioner believes that the context of the regulation and the provisions of Section 30.41 are sufficient to indicate which secretary is making the certification.

Section 30.105(b)(2).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: Again, it might be more efficient if the Department were to provide the updated bylaw changes.

Response: The Commissioner rejects this comment. The Commissioner believes that the burden of providing the information necessary to process an application is properly placed on the applicant. Further, the credit union should have integrated all prior bylaw amendments into the text of its bylaws so that it is operating from a current, updated and integrated document. The Department does not integrate amendments into the bylaws it keeps on file regarding its licensees. Rather, subsequent amendments to bylaws are considered supplements, not unlike pocket parts in law books. Thus, it is more convenient and saves processing time if the applicant provides a copy of its current, integrated set of bylaws.

Section 30.701(a)(3)(D)1..

Commenting Party: Allied Healthcare Federal Credit Union.

Comment: Chapter 13 bankruptcies should not be taken out of the reporting requirements. Experience indicates that very little more is collected on Chapter 13's than on Chapter 7's.

Response: The Commissioner rejects this comment. Even though the Commenting Party's comment does not relate to a change subject to the 15-day notice, the following response is provided. As noted in the Initial Statement of Reasons, the changes to Section 30.701, in part, are to incorporate the categories of loans defined in existing regulation section 30.400, since section 30.400 is proposed to be repealed. Existing regulation section 30.400(d) defines a category for obligations where the debtor

has filed bankruptcy, other than under Chapter XIII of the Bankruptcy Act. As such, under the existing regulation, Chapter 13 bankruptcies are already taken out of the reporting requirements of this section. As such, the comment goes beyond the scope of the Commissioner's proposal.

Section 30.701(a)(3)(D)3..

Commenting Party: Allied Healthcare Federal Credit Union.

Comment: Some credit unions (especially the under $10 million types) assign loans in place of having an in-house collector. When they do this, they assign them at 60 or 90 days. This would require them to charge-off long before credit unions that have opted for an in-house collector. Some provision might be made for such credit unions.

Response: The Commissioner rejects this comment. Even though the Commenting Party's comment does not relate to a change subject to the 15-day notice, the following response is provided. As noted in the Initial Statement of Reasons, the changes to Section 30.701, in part, are to incorporate the categories of loans defined in existing regulation section 30.400, since section 30.400 is proposed to be repealed. Existing regulation section 30.400(f) defines a category for obligations assigned to an agent or attorney for collection. As such, there is no change in the proposed regulation from existing regulation in this regard. As such, the comment goes beyond the scope of the Commissioner's proposal.

Section 30.701(c).

Commenting Party: Allied Healthcare Federal Credit Union.

Comment: Eliminate the option to "post a notice in lieu of the statement." Actual financial statements should be posted.

Response: The Commissioner rejects this comment. The changes made to this regulation which were subject to the 15-day comment period, were made as a result of comments received from this Commenting Party (elsewhere employed). The intent of proposing the changes to this section are to ensure that members have relevant financial information regarding the credit union, while at the same time permitting credit unions some flexibility how they make this financial information available to members. The Commissioner rejects the Commenting Party's comment because it detracts from the flexibility of the proposal without any clear rationale for the suggested change.

Section 30.802(a)(1), (2), and (3).

Commenting Party: California Credit Union League

Comment: The provisions of subsections (a)(1), (a)(2), and (a)(3) as proposed continue to place credit unions at a competitive disadvantage versus other real estate lenders in the marketplace. California's state chartered banks are permitted to make loans up to 90 percent loan-to-value without PMI requirements (California Financial Code Section 1227(b)). Credit unions are and will be required to comply with an 80 percent limit because of regulatory fiat, not due to statutory requirements.

California Civil Code Section 2954.12 limits the ability of lenders to charge PMI on real estate loans with a loan-to-value greater than 75 percent. This benefits consumers using two or three loans to reduce the loan-to-value of the first trust deed loan to fall below the 75 percent threshold. Yet, the regulations would require the credit union to obtain and pay for PMI if the total loans (first and junior liens) exceed 80 percent if it offers credit union members the same loan program.

Response: Even though the Commenting Party's comment does not relate to a change subject to the 15-day notice, the following response is provided. The Commissioner rejects this comment. The private mortgage insurance requirement is not new. The existing regulation already requires that a loan secured by a first or second lien on improved real property not have a loan-to-value ratio which exceeds 80 percent unless any excess will be insured by an instrumentality of the federal government or by a policy of private mortgage insurance. The proposed changes permits junior liens, not limited to second liens, and retains the existing requirement that the total obligations secured by liens on the property not exceed a loan-to-value ratio of 80 percent, unless the excess is insured by an agency or instrumentality of the federal government or by a policy of private mortgage insurance. Accordingly, the suggested change goes beyond the scope of changes proposed by the Commissioner. A significant change to, or elimination of, the requirements relating to private mortgage insurance would be a significant change from the status quo which could have substantial impact on the safety and soundness of the industry. Such a proposal would require further study and careful consideration by the Commissioner.

Section 30.802(a)(1)(B).

Commenting Party: California Credit Union League

Comment: We encourage the Department to change subsection (a)(1)(B) to 90 percent of the appraised value (from the current 80 percent) which would allow credit unions to have an equal playing field in real estate lending.

Response: Even though the Commenting Party's comment does not relate to a change subject to the 15-day notice, the following response is provided. The Commissioner rejects this comment. The proposed regulation retains the 80 percent loan-to-value ratio without PMI requirement which exists in existing regulations. Accordingly, the suggested change to increase the loan-to-value ratio limit without PMI from 80 to 90 percent goes beyond the scope of changes proposed by the Commissioner. A significant change to the requirements relating to private mortgage insurance would be a significant

change from the status quo which could have substantial impact on the safety and soundness of the industry. Such a proposal would require further study and careful consideration by the Commissioner.

Commenting Party: Allied Healthcare Federal Credit Union

Comment: Does the amended regulation permit loans with higher than a 100 percent loan-to-value ratio as long as there is private mortgage insurance? If so, is this what is intended?

Response: This is a question more than a comment. The answers to both questions is in the affirmative.

Section 30.802(a)(2) and (a)(3).

Commenting Party: California Credit Union League

Comment: Many older credit union members may not have an existing loan or may have a loan with a small principal balance on their home. When they come into the credit union for an equity loan, that loan may become a first lien simply because there are no other liens on the property. The proposed regulations (a)(2) would require a full title insurance policy on these loans despite the relatively small balance of the loan and low loan-to-value. Credit unions should have the option to obtain a limited title insurance policy without requesting a waiver from the department for these loans in accordance with the board of directors-approved lending policies. The title insurance policy requirement with respect to first liens should be amended to apply only to purchase money liens. The title insurance policy requirement in the case of junior liens should be amended to qualify that "junior liens" includes equity loans on unencumbered property that become first liens.

Response: The Commissioner rejects this comment. The proposed regulation would not require a full title insurance policy in the example provided by the Commenting Party. Proposed regulation section 30.802(d) expressly exempts first liens of $50,000 or less from the requirement for obtaining a title insurance policy. The Commissioner and Department staff have considered very carefully the circumstances under which obtaining a full title insurance policy would be deemed necessary as a safe and sound lending practice, from those situations where a full title insurance policy may not be warranted, but where an abbreviated policy or no title insurance would be sufficient. The proposed regulation is the result of the Department's consideration of these issues and establishes minimum requirements with respect to title insurance applicable to all credit unions. The Commenting Party suggests giving credit unions the option to obtain a limited title insurance policy in accordance with the board of directors-approved lending policies. The Commissioner does not believe that allowing credit unions on their own to determine the circumstances where a title insurance policy is required, will ensure safe and sound practices industry-wide. As noted above, the proposed regulation establishes what the Commissioner deems to be the minimum standards when applied against the industry as a whole, and it would be inappropriate to allow credit unions to digress from these practices without oversight.

With respect to the Commenting Party's other comments, the requirement for a title insurance policy under existing regulation does not only apply to purchase money liens. The Commenting Party's last

comment is confusing and it is unclear what the Commenting Party intended. As a general matter, whether a credit union is required to obtain a full or an abbreviated title insurance policy would be judged at the time the obligation is extended. If a second lien as a result of the payoff of the first lien becomes the senior lien, it is not expected that a credit union would obtain a full title policy (for a lien over $50,000) by reason of this event.

Section 30.802(c).

Commenting Party: California Credit Union League

Comment: When the Department added subsection (c) back into the proposed regulations, it did not account for changes in the California Civil Code regarding real property loans with call options. California Civil Code Section 2924i requires the lender to provide the borrower with a notice of intent to call the loan between 90 and 150 days before the exercise date. However, the proposed language of this subsection would require notice that the borrower will have only 90 days notice before the date even if the notice is mailed 150 days prior. We encourage the Department to amend this section dealing with the timing of the deliver of the notice to "upon the terms of the contract" rather than the stated "within ninety (90) days."

Response: The Commissioner rejects this comment. The notice contained in the proposed regulation is not a required form; rather, the regulation clearly refers to "the following written disclosure, or its substantial equivalent." Accordingly, credit unions would insert the appropriate time period which complies with existing law and contract. The 90-day notice provided for in the sample would comply with the minimum notice period required by Civil Code Section 2924i, but there is nothing in the proposed regulation which would prohibit the notice to refer to a longer time period if necessary to be consistent with Civil Code Section 2924i.

Commenting Party: Allied Healthcare Federal Credit Union

Comment: Recommends that DFI drive the maximum loan type limitation off of assets rather than the loan portfolio (i.e., 25 percent of assets).

Response: The Commissioner rejects this comment. The proposed regulation reinserts the existing requirement appearing at section 30.802(c) without change. This provision was reinserted into the proposed regulation upon reconsideration of whether the elimination of any limit on total real estate loans would contribute or detract from the safety and soundness of the credit union industry as a whole. Upon reconsideration, the Commissioner determined that it would be more appropriate to retain the existing limit pending further study into whether the limitation can be removed or changed without jeopardizing the safety and soundness of the industry. Accordingly, the suggestion to change the limitation on total real estate loans from 40 percent of total loans to 25 percent of total assets goes

beyond the scope of what is being proposed by the Commissioner. A significant change to the limits on total real estate loans would be a significant change from the status quo which could have substantial impact on the safety and soundness of the credit union industry. Such a proposal would require further study and careful consideration by the Commissioner.

Section 30.802(c)(4).

Commenting Party: Allied Healthcare Federal Credit Union

Comment: Was it intended that the 4-unit residence be the primary residence of the borrower?

Response: This is not a comment but a question. It was not intended that the one-to-four residential units be the primary residence of the borrower.

Section 30.802(c).

Commenting Party: Musicians' Credit Union

Comment: Objects to replacing the proposed language with the language of the existing regulation. There should be a regulation addressing a limitation on the amount of long-term fixed-rate real estate lending a credit union is granting. However, the regulation should be changed to 40 percent of total assets, not total loans. By linking the percentage to asset size, it provides the credit union with a better measure of the ability to absorb any interest rate risk exposure on the balance sheet.

Response: As stated above, the proposed regulation reinserts the existing requirement appearing at section 30.802(b)(3)(C) without change. This provision was reinserted into the proposed regulation upon reconsideration of whether elimination of any limit on total real estate loans would contribute or detract from the safety and soundness of the credit union industry as a whole. Upon reconsideration, the Commissioner determined that it would be more appropriate to retain the existing limit pending further study into whether the limitation can be removed or changed without jeopardizing the safety and soundness of the industry. Accordingly, the suggestion to change the limitation on total real estate loans from 40 percent of total loans to 40 percent of total assets goes beyond the scope of what is being proposed by the Commissioner. A significant change to the limits on total real estate loans would be a significant change from the status quo which could have substantial impact on the safety and soundness of the credit union industry. Such a proposal would require further study and careful consideration by the Commissioner.

Section 30.802(d)(1).

Commenting Party: California Credit Union League

Comment: We do not believe that the changes to (d)(1) completely solve the issue of requiring title insurance policies on auto loans with a "courtesy lien" on real estate so that interest paid may be tax-deductible for the member. We ask the Department to amend subsection (d)(1) to qualify that only junior liens held by the credit union will be aggregated to determine whether the $100,000 threshold has been reached, above which a title insurance policy would be required. The auto-equity loan program is one way credit unions are able to compete with the auto manufacturers zero interest loan. State regulations should not impede this successful program when the courtesy lien is place on the property as an abundance of caution and is not used in determining qualification for the loan.

Response: The Commissioner rejects this comment. Contrary to this Comment, the $100,000 threshold applies only to aggregate junior liens held by a credit union, as described in Section 30.802(a)(3) and (4).

PART 5

ALTERNATIVES CONSIDERED

The main purposes of this rulemaking are to streamline the existing Credit Union Regulations, to conform them to existing industry practices, to remove unduly burdensome regulation, and to provide credit unions with greater flexibility and control with respect to their business and operations, all of this while maintaining minimum requirements and safeguards to promote safety and soundness of their operations. Without such changes, the Credit Union Regulations would remain less clear, would not reflect existing law and industry practice, and would impose unnecessary regulatory burden. The proposed regulations, to a large extent, have been under consideration for a number of years and are the result of considerable exchange between the Department and the affected industry. The Commissioner has carefully considered all of the comments received throughout this rulemaking process and has determined that no alternative considered by the Commissioner would be more effective in carrying out the purposes for which this rulemaking is proposed or would be as effective and less burdensome to private person than the proposed regulations. The specifics relating to alternatives considered, which were adopted or rejected, are discussed in Parts 3 and 4 in connection with the comments received and in the Initial Statement of Reasons.

PART 6

IMPACT ON BUSINESS

The Commissioner has determined that this rulemaking will not have a significant adverse economic impact on business. The main purposes of this rulemaking is to streamline the existing Credit Union Regulations, to conform them to existing industry practices, to remove unduly burdensome regulation, and to provide credit unions with greater flexibility and control with respect to their business and operations. In addition, the proposed regulations add greater transparency to the application process for expanding fields of membership and provides for a streamlined procedure for eligible credit unions to add select groups to their fields of membership. These changes should not result in any significant adverse economic impact. In the very few instances where a Commenting Party alleged that a

proposed change would have an adverse economic impact, such allegations were due to a misunderstanding of the proposed regulation or of the requirements of existing law.